Andhra High Court
The Indur District Cooperative ... vs M/S. Microplex (India), ... on 27 October, 2015

THE HONBLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NOS.35872 OF 2012 aand batch 27-10-

2015

The Indur District Cooperative Marketing Society Ltd., Nizamabad... Petitioner M/s.

Microplex (India), Hyderabad, and another .. Respondents

Counsel for petitioners: Sri Vedula Srinivas Counsel for respondent NO.1:SRI Ashok Anand Kumar Counsel for respondent NO.2 :Govt. Pleader for Industries & Commerce <Gist:

>Head Note:

? CASES REFERRED:

1. (1998) 8 Supreme Court Cases 1

2. (2015) 6 Supreme Court Cases 773

3. (2009) 6 Supreme Court Cases 735

4. (2009) 10 Supreme Court Cases 552

5. LAWS (ALL)-2013-10-111 = ADJ-2013-10-208

6. AIR 2012 BOMBAY 178

7. (2012) 7 Supreme Court Cases 462

8. (2010) 5 Supreme Court Cases 44

9. (2012) 6 Supreme Court Cases 345

10. C.R.P. No. 4408 of 2012 dated 22.11.2012

11. AIR (GUJ) 2015 114

12. LAWS (MAD)-2012-11-231

13. 2014 (6) ALD 266

14. LAWS (P&H)-2015-5-196

15. 2010 (8) RCR (Civil) 2452

16. (2014) 3 Supreme Court Cases 502

17. (1875) LR 1 Ch D426 @ p. 431

18. AIR 1936 PC 253

19. AIR 1954 SC 322

20. 2014 Law Suit (HP) 313

21. 2014 Law Suit (Cal) 812 THE HONBLE SRI JUSTICE SANJAY KUMAR WRIT PETITION NOS.35872, 35879, 39497 AND 39504 OF 2012 C O M M O N O R D E R The Indur District Cooperative Marketing Society Limited, Nizamabad, is the petitioner in W.P.NOS.35872 and 35879 of 2012 WHILE the Karimnagar District Cooperative Marketing Society Limited, Karimnagar, is the petitioner in W.P.Nos.39497 and 39504 of 2012. M/s. Microplex (India) Limited, Hyderabad, is the first respondent in W.P.NOS.35872, 35879 and 39497 of 2012, and M/s. Nagarjuna Agroo Chemicals Private Limited, Hyderabad, is the first respondent in W.P.No.39504 of 2012. The second respondent in all the writ petitions is the Andhra Pradesh Micro & Small Enterprises Facilitation Council, Hyderabad, (for brevity, the Council).

W.P.NOS.35872 and 35879 of 2012 WERE filed challenging the individual orders dated 25.08.2012 passed by the Council in Case NOS.13/IFC/2011/126 and 13/IFC/2011/125 respectively and seeking writs of certiorari to quash the same as illegal and without jurisdiction. W.P.Nos.38497 and 39504 of 2012 WERE filed seeking writs of prohibition directing the Council to forebear from proceeding with Case NOS.13/EFC/2011/120 and 13/EFC/2011/119 respectively by declaring that the claims therein did not fall within the ambit of the Micro, Small and Medium Enterprises Development Act, 2006 (for brevity, the Act of 2006).

By individual interim orders dated 21.11.2012 passed in W.P.NOS.35872 and 35879 of 2012, this Court granted stay of operation of the orders dated 25.08.2012 impugned in these writ petitions. Similarly, by interim orders dated 24.12.2012 passed in W.P.Nos.39497 and 39504 of 2012, this Court granted stay of further proceedings in the two cases pending on the file of the Council.

Vacate stay petitions were filed by the first respondent company in each of these writ petitions and the matters were listed before this Court for hearing of these interlocutory petitions. However, as comprehensive arguments covering the merits of the main cases were advanced by Sri Vedula Srinivas, learned counsel for the petitioner societies, and Sri Ashok Anand Kumar, learned counsel appearing for the first respondent company in each of these cases, the writ petitions are taken up for final disposal.

The admitted position in all these cases is that the petitioner societies purchased bio-pesticides from the first respondent in these cases. There was thus a clear transaction of sale between them. In so far as W.P.NOS.35872, 35879 and 39497 of 2012 are concerned, the first respondent therein, M/s. Microplex (India), Hyderabad, is stated to have its manufacturing unit at Rotha in Wardha District, Maharashtra and its registered office is also situated there. It only has an administrative office at Begumpet in Hyderabad and did not carry on any manufacturing activity within the State of Andhra Pradesh, as it then was. While so, it filed separate claims before the Council alleging that it was due and payable certain amounts of money for the material supplied by it to the petitioner society in each of these cases. The stand of the petitioner societies was that the first respondent company would not fall within the definition of supplier in the context of the Act of 2006, as it got registered with the Department of Industries, State of Andhra Pradesh, as a marketing, distribution and service organization under application dated 26.03.2011 and as on the date of supply of the material by it to the petitioner societies, it was not a supplier as it did not enjoy such registration. The petitioner societies asserted that the Act of 2006 made it clear that registration with the authority as notified by the State was obligatory for invoking the provisions thereof and thus, registration within the State of Andhra Pradesh, as it then was, was a must for the first respondent to invoke the provisions of the Act of 2006. As such registration took place only in March, 2011, the petitioner societies alleged that transactions prior to the said date could not be made the subject matter of claims before the Council under the Act of 2006.

Significantly, in the orders impugned in W.P.NOS.35872 and 35879 of 2012, the Council did not even deal with the above stated ground, though it referred to it in the body of the order.

That apart, in their statements of defence filed before the Council, the petitioner societies also pointed out that as per Section 18 of the Act of 2006, the Council had to conduct a conciliation in accordance with Sections 65 to 81 of the Arbitration and Conciliation Act, 1996, and only when such conciliation was unsuccessful and stood terminated without any settlement between the parties, the Council had the power to take up the dispute for adjudication by way of arbitration. The petitioner societies asserted that the Council had straight away taken up arbitration proceedings without referring the matter for conciliation. They therefore asserted that the procedure adopted by the Council was not in accordance with the Act of 2006. They also raised the issue of limitation in the context of the materials, which were the subject matter of the claims, having been supplied long before the filing of the claim statements. These two grounds were raised in all the four cases.

In W.P.No.39504 of 2012, the petitioner society purchased bio- pesticides from the first respondent company therein which led to the filing of a statement of claim by the first respondent company before the Council in relation to the amounts allegedly due and payable to it by the petitioner society. The petitioner society filed its statement of defence before the Council and the matter was reserved for orders. But prior to pronouncement of the order by the Council, this Court granted stay of further proceedings in the matter. The petitioner society contended that the first respondent company did not fall within the definition of a supplier under the Act of 2006 and therefore, it could not invoke the jurisdiction of the Council. It further contended that the first respondent company got registered with the Department of Industries, State of Andhra Pradesh, as a marketer, distributor and repacker of agricultural chemicals in August, 2011, but supply of the material, which

was the subject matter of the claim, was long prior thereto.

The stand of the first respondent company in all the cases before this Court is that these writ petitions are not maintainable as Section 19 of the Act of 2006 provides an alternative remedy for getting a decree, award or order passed by the Council set aside. They further contended that they qualified as suppliers under the Act of 2006 and were therefore entitled to seek reference of their disputes to the Council under Section 18 thereof for recovery of the amounts due. Various other contentions were urged by them which were reiterated by Sri Ashok Anand Kumar, their learned counsel, during the course of arguments and will be dealt with hereinafter.

Sri Vedula Srinivas, learned counsel, raised three grounds before this Court. He would firstly contend that the first respondent company in each of these cases did not qualify as a supplier under the Act of 2006 and as reference to the Council under Section 18 could only be made at the behest of a supplier, the Council had no jurisdiction to entertain the claim put forth by them. His second contention is that in any event, even if the first respondent company qualified as a supplier, it would be only from the date of its registration in the State of Andhra Pradesh, as it then was, and therefore, the transactions anterior to such registration would not fall within the scope of the Act of 2006. As it is an admitted fact that supplies were made by the first respondent company in each of these cases to the petitioner societies prior to their registration in the State of Andhra Pradesh, during the year 2011, the learned counsel would contend that the Council had no jurisdiction to entertain claims in relation thereto. The third contention is that the Council is bound to follow the procedure prescribed in the Act of 2006 and violations in this regard would render such proceedings invalid and illegal.

As regards the contention that these writ petitions are not maintainable as an efficacious alternative remedy is provided by the statute, Sri Vedula Srinivas, learned counsel, pointed out that a jurisdictional issue had been raised before the Council in all the cases but the Council passed orders, under challenge in W.P.NOS.35872 and 35879 of 2012, without dealing with the same. As this jurisdictional issue went to the very root of the matter, the learned counsel would assert that a writ petition would lie before this Court and it would not be necessary for the petitioner societies to take recourse to the statutory remedy. In this regard, Sri Vedula Srinivas, learned counsel, placed reliance on WHIRLPOOL CORPORATION V/s. REGISTRAR OF TRADE MARKS, MUMBAI . The Supreme Court observed therein that though the High Court would normally not exercise jurisdiction if an effective and efficacious remedy was available, it has consistently been held that such remedy would not operate as a bar where the order under challenge is wholly without jurisdiction. As rightly pointed out by Sri Vedula Srinivas, learned counsel, the observations made by the Supreme Court in UNION OF INDIA V/s. MAJOR GENERAL SHRI KANT SHARMA , in the context of WHIRLPOOL CORPORATION1, did not deviate from the principle enunciated therein but only affirmed the general principle that when a statutory forum is created by law for redressal of grievances, a writ petition should ordinarily not be entertained, ignoring the statutory dispensation. This later proposition would obviously have no application when a jurisdictional issue is raised going to the very root of the matter.

This Court finds merit in this submission as a jurisdictional issue had been raised by the petitioner societies in all these cases but the Council blindly overlooked the same in two of the matters and

passed orders without even addressing that aspect. It would therefore be open to the petitioner societies to invoke the jurisdiction of this Court under Article 226 of the Constitution.

Now, a look at relevant provisions of the Act of 2006 and the contentions urged in the context thereof. Section 2(D) thereof defines buyer as under:

(d) buyer means whoever buys any goods or receives any services from a supplier for consideration. Section 2(N) of the Act of 2006 defines supplier as under:

(n) 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.

Sri Vedula Srinivas, learned counsel, would contend that the above definition would have to be read disjunctively in the context of what it means and what it includes. He would assert that a micro or small enterprise would qualify as a supplier only after filing a memorandum with the authority referred to in Section 8(1) of the Act of 2006. It is in this context that strong reliance is placed by him upon the fact that the first respondent company in each of these cases got itself registered in the erstwhile State of Andhra Pradesh under the Act of 2006 only in the year 2011. He would therefore contend that any transactions prior to such registration cannot be the basis for a reference under Section 18 of the Act of 2006.

A micro enterprise and a small enterprise have been defined under Sections 2(H) and 2(M) respectively of the Act of 2006 in the context of their classification under Section 7 of the Act of 2006. This Section classifies these two entities on the basis of the investment made therein - a micro enterprise is one engaged in the manufacture or production of goods in which the investment in plant and machinery does not exceed twenty-five lakh rupees, while a micro enterprise engaged in providing or rendering of services is one where the investment in equipment does not exceed ten lakh rupees. Similarly, a small enterprise is one engaged in the manufacture or production of goods in which the investment in plant and machinery is more than twenty five lakh rupees but does not exceed five crore rupees, while a small enterprise engaged in providing or rendering of services is one where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees.

Section 8 of the Act of 2006 requires the filing of a memorandum by micro or small enterprises with the authority specified by the State Government under Section 8(4) or the Central Government under Section 8(3), as the case may be. Significantly, discretion is allowed to a micro or a small enterprise as to the filing of such memorandum and it is not mandatory. Delayed payments to micro and small enterprises is dealt with in Chapter V of the Act of 2006. Section 15 in this Chapter states that where a supplier supplies goods or renders services to a buyer, the buyer shall make payment therefor within the stipulated time frame. Section 16 stipulates that where any buyer fails to make payment of the amount to the supplier as required under Section 15, the buyer would be liable to pay compound interest with monthly rests to the supplier on that amount. Section 17 provides that for any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under Section 16. Section 18 provides for reference of a dispute in this regard to the Micro and Small Enterprises Facilitation Council and reads as under:

18. (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) .

It is in the context of the aforestated statutory scheme that the status of the parties would have to be examined. Admittedly, unless the first respondent company in these cases falls within the definition of a supplier, it would not be entitled to go before the Council under Section 18 for recovery of the amounts allegedly due. There is no dispute that the petitioner societies in these cases fall within the definition of buyer under Section 2(D) of the Act of 2006.

Sri Ashok Anand Kumar, learned counsel, would contend that the statutory scheme of the Act of 2006 must be construed and interpreted in such a manner so as to not defeat the objective thereof, which is to facilitate promotion, development and enhancement of micro, small and medium enterprises. He would contend that to achieve this object, certain provisions of the Act of 2006 would have to be construed as directory and not mandatory. Reference in this regard was made by him to RAM DEEN MAURYA (DR.) V/s. STATE OF UTTAR PRADESH , wherein the Supreme Court observed that if a rule is held to be mandatory, it must be strictly construed and followed and an act done in breach thereof would be invalid; but if, on the other hand, it is directory, the act would be valid although non-compliance may give rise to some other penalty, if provided by the statute. The Supreme Court further observed that the word shall, in its ordinary import, is obligatory, but it need not be given that connotation in each and every case and the provisions can be interpreted as directory instead of mandatory depending upon the purpose which the legislature intended to achieve as disclosed by the object, design, purpose and scope of the statute. The Supreme Court concluded that while interpreting the provisions concerned, regard must be had to the content, subject-matter and object of the statute in question.

Again, in UNION OF INDIA V/s. A.K. PANDEY , the Supreme Court observed that it is fairly well settled that prohibitive or negative words are ordinarily indicative of the mandatory nature of the provision, although not conclusively, and the Court has to carefully examine the purpose of such provision and the consequences that follow from non-observance thereof. The Supreme Court pointed out that if the context does not show or demand otherwise, the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command and when the word shall is followed by prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such.

Sri Ashok Anand Kumar, learned counsel, would contend that Section 2(N) of the Act of 2006 has to be interpreted to mean that filing of a memorandum is only a qualifying phrase and it cannot be construed to curtail the definition, so as to exclude micro and small enterprises which did not file such a memorandum. He referred to M/S. HAMEED LEATHER FINISHERS V/s. M/S. ASSOCIATED CHEMICAL INDUSTRIES KANPUR PVT. LTD. , wherein a Division Bench of the Allahabad High Court held that filing of a memorandum under Section 8 was not compulsory for a small enterprise to fall within the definition of a supplier.

Reliance was placed on M/S. STEEL AUTHORITY OF INDIA LTD. V/s. MICRO, SMALL ENTERPRISE FACILITATION COUNCIL, THROUGH JOINT DIRECTOR OF INDUSTRIES, NAGPUR REGION, NAGPUR , wherein a Division Bench of the Bombay High Court observed, in the context of Section 18 of the Act of 2006, that the said provision allowed any party to a dispute, namely, a buyer or a supplier to make a reference to the Council but there was no provision in the Act of 2006 which negated or rendered an arbitration agreement entered into between the parties ineffective. The Division Bench therefore concluded that it cannot be said that because Section 18 provides for a forum for arbitration, an independent arbitration agreement entered into between the parties would cease to have effect and held that there was no inconsistency between the arbitration conducted by the Council under Section 18 of the Act and the arbitration conducted under an

agreement clause, since both were governed by the provisions of the Arbitration and Conciliation Act, 1996.

Sri Ashok Anand Kumar, learned counsel, then referred to PURBANCHAL CABLES AND CONDUCTORS PRIVATE LIMITED V/s. ASSAM STATE ELECTRICITY BOARD in the context of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for brevity, the Act of 1993), the precursor to the Act of 2006, being prospectively applicable to delayed payments by the buyer after the commencement thereof. The Supreme Court observed that any substantive law shall operate prospectively and as the Act of 1993 is a substantive law creating vested rights of entitlement in case of delayed payment, it can only operate prospectively.

The same principle was reiterated by the Supreme Court in MODERN INDUSTRIES V/s. STEEL AUTHORITY OF INDIA LIMITED THROUGH MANAGING DIRECTOR , wherein the earlier decision in PURBANCHAL CABLES AND CONDUCTORS PRIVATE LIMITED6 was quoted with approval. In this context, the learned counsel would contend that the Act of 2006 had already come into operation by the time the supplies were made by his clients and therefore, it is not a question of making the Act of 2006 retrospective in its operation.

Learned counsel placed reliance on GOODYEAR INDIA LIMITED V/s. NORTON INTECH RUBBERS PRIVATE LIMITED in the context of Section 19 of the Act of 2006 being the proper remedy for a person aggrieved by an order passed by the Council under Section 18. However, this judgment did not relate to the issue of maintainability of a writ petition on a jurisdictional issue and only dealt with the question of discretion of the Court as regards payment of 75% of the sum awarded by the Council. Similar was the case before this Court in M/s. HYDERABAD METRO WATER SUPPLY AND SEWERAGE BOARD, HYDERABAD V/s. M/s. DECCAN POWER PRODUCTS PVT. LTD., HYDERABAD , the Gujarat High Court in DEVI ENTERPRISE LIMITED V/s. STATE LEVEL INDUSTRY FACILITATION COUNCIL THROUGH MEMBER and the Madras High Court in T. GNANAM V/s. UNION OF INDIA . These judgments are therefore of no avail.

In BALLAPUR INDUSTRIES LTD. V/s. A.P. MICRO, SMALL ENTERPRISES FACILITATION COUNCIL , this Court dismissed writ petitions filed challenging the awards passed by the Council under Section 18 of the Act of 2006, giving liberty to the petitioners to avail the remedy of appeal under SECTION19. However, perusal of the judgment reflects that no issue of jurisdiction had been raised therein and only the question of the 75% pre-deposit was considered. Therefore, this judgment is also of no avail.

It is relevant to note that the Act of 2006 was enacted for the benefit of micro, small and medium enterprises, but Chapter V thereof relates to delayed payments to micro and small enterprises only. Similarly, supplier is defined under Section 2(N) in the context of only micro or small enterprises and not a medium enterprise. It is in this context that Section 8(1) of the Act of 2006 becomes relevant. This provision reads as under:

8. Memorandum of micro, small and medium enterprises. - (1) Any person who intends to establish,

(a) a micro or small enterprise, may, at his discretion, or

(b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or

(c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall file the memorandum of micro, small or, as the case may be, or medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that It is therefore clear that a micro or small enterprise is not mandatorily required to file a memorandum with the authority specified by the State Government or the Central Government, as the case may be, and discretion is given to it in this regard. However, Section 2(N), in so far as it defines a supplier to mean a micro or small enterprise is followed with the qualification that it should have filed a memorandum with the authority referred to in sub-section (1) of Section 8. However, the inclusive part of the definition under Section 2(N)(III) states that any company, co-operative society, trust or body, by whatever name called, and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises, would also qualify as a supplier. In the context of this inclusive part of the definition, there is no requirement that the micro or small enterprise, whose goods are being sold or whose services are being rendered by the company, co- operative society, trust or body, should have filed a memorandum under Section 8(1) of the Act of 2006.

It would be anomalous to interpret the definition to mean that for a micro or small enterprise to be a supplier, it must mandatorily file a memorandum under Section 8(1), but any company, co-operative society, trust or body, which either sells goods or renders services of a micro or small enterprise, would automatically qualify as a supplier, irrespective of whether or not such micro or small enterprise has itself filed a memorandum under Section 8(1)! Given the totality of the definition and the scheme and import of the enactment, this Court is inclined to accept the submission of Sri Ashok Anand Kumar, learned counsel, that the phrase which has filed a memorandum with the authority in Section 2(N) is only qualifying and does not curtail the scope of the definition.

Therefore, filing of a memorandum under Section 8(1) of the Act of 2006 is not a condition precedent for a micro or small enterprise, which otherwise satisfies such description under the Act of 2006, to be included within the ambit of a supplier as defined under Section 2(N). The first respondent company in each of these cases would therefore qualify as a supplier under the said definition and their claims before the Council did not stand invalidated on this ground.

Registration of the first respondent company in these cases in the erstwhile State of Andhra Pradesh in the year 2011 WOULD not have the effect of giving retrospective operation to the Act of 2006, as the supplies in question were made after the year 2006 and not prior thereto. As long as these companies were suppliers within the meaning of Section 2(N) of the Act of 2006 and were located within the jurisdiction of the Council, as required by Section 18(4), the Council had jurisdiction to

deal with their claims. In this regard it is relevant to note that what is required is only that they are located within the jurisdiction of the Council and not that they should be registered or have their registered office within such jurisdiction. It is not in dispute that the first respondent company in each of these cases did have its administrative office located within the jurisdiction of the Council and therefore fulfilled the requirement of Section 18(4) of the Act of 2006.

In so far as the alleged procedural irregularity is concerned, Section 18(2) of the Act of 2006 states in no uncertain terms that the Council shall either itself conduct a conciliation in the matter or seek assistance of an institution or center by making a reference to it for conducting conciliation. Section 18(3) demonstrates that it is only where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties that the Council is empowered to either itself take up the dispute for arbitration or refer it to any institution or center for such arbitration. Notably, the name of the Council is Micro and Small Enterprises Facilitation Council. Therefore, for facilitating resolution of a dispute between a buyer and a supplier, the scheme of this Act requires the Council to first take recourse to the mode of conciliation and only thereafter force adjudication upon them through the process of arbitration. This being the statutory scheme, the question is whether the Council fell foul thereof presently in not initiating the process of conciliation at all before undertaking arbitration and rendering the orders impugned in these writ petitions.

Sri Ashok Anand Kumar, learned counsel, relied on PUNJAB STATE ELECTRICITY BOARD V/s. A.R. TRANSMISSION PRIVATE LIMITED . Therein, in the context of Section 18(2) of the Act of 2006, the Punjab & Haryana High Court disagreed with the opinion of the Gauhati High Court in OIL AND NATURAL GAS CORPORATION LTD. V/s. GOVERNMENT OF ASSAM that where the Council does not make an effort for conciliation, the proceedings conducted thereafter and the consequential order passed thereon would be an infraction of law. The Punjab & Haryana High Court was of the opinion that the provision for making an effort at conciliation was only directory in nature.

Sri Ashok Anand Kumar, learned counsel, would contend that the petitioner societies in these cases, having raised this contention, did not choose to follow it up and should therefore be deemed to have waived their objection in this regard. This Court is not inclined to agree. Parties cannot tacitly confer jurisdiction when it is otherwise legally lacking and there can be no deemed waiver or acceptance in this regard. Once the statute provided the scheme of operation for functioning of the Council, there was no discretion vested in the Council to alter the same. In this regard, reference may be made to the recent observations of the Supreme Court in DIPAK BABARIA V/s. STATE OF GUJARAT . Therein, referring to the propositions laid down in TAYLOR V/s. TAYLOR , NAZIR AHMAD V/s. KING EMPEROR and RAO SHIV BAHADUR SING V/s. STATE OF VINDHYA PRADESH , the Supreme Court reiterated the oft quoted proposition that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

Considering Section 18 of the Act of 2006, a Division Bench of the Himachal Pradesh High Court in PROCESS EQUIPMENTS INDIA V/s. H.P. MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL held that the Council, being a statutory authority, had no jurisdiction to deviate from the

prescribed procedure under Section 18 of the Act of 2006 as it is required to act within a frame work of law as laid down in the Act and the Rules and any violation in this regard would amount to transgression of jurisdiction.

Similarly, in LLOYD INSULATIONS (INDIA) LTD. V/s. STATE OF WEST BENGAL , a learned Judge of the Calcutta High Court had occasion to deal with Section 18 of the Act of 2006 and the procedure prescribed thereunder. The learned Judge was faced with a situation where the Council had passed an award without initiating the process of conciliation, as in the present case. The learned Judge held that the Council assumed jurisdiction without the existence of the jurisdictional fact, i.e., an order recording that there was no settlement in the process of conciliation and that the conciliation stood terminated warranting resolution of the dispute by arbitration.

Thus, the preponderance of judicial thought is also inclined towards holding the procedure prescribed in Section 18(2) of the Act of 2006 to be mandatory. It was therefore not open to the Council to deviate from the said statutory procedure and take recourse to arbitration directly without first initiating conciliation between the parties. The object of the Act and its scheme clearly indicate that the thrust thereof is to promote facilitation between the parties rather than force adjudication upon them. The Council therefore transgressed its jurisdiction in adopting its own procedure in violation of the prescribed procedure. The orders under challenge in W.P.NOS.35872 and 35879 of 2012, being in violation of the prescribed procedure, are therefore without jurisdiction and are accordingly set aside.

W.P.NOS.35872 and 35879 of 2012 are allowed.

In the light of the finding rendered by this Court to the effect that the first respondent companies in W.P.Nos.39497 and 39504 of 2012 also fall within the definition of a supplier under Section 2(N) of the Act of 2006, the prayer of the petitioner societies therein for writs of prohibition interdicting the Council from proceeding with their cases must necessarily fail. However, the Council shall take note of the observations made in the context of the statutory scheme under Section 18 of the Act of 2006 and act accordingly.

W.P.Nos.39497 and 39504 of 2012 are therefore dismissed subject to the above observation.

Pending miscellaneous petitions in all the cases shall stand closed in the light of this final order. No order as to costs.

_____SANJAY KUMAR, J 27TH OCTOBER, 2015