

D/L 01
29.07.2025
Court No.14
PRADIP

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 20486 of 2024

Additional Director General of Police
Vs.
State of West Bengal & Ors.

Mr. Samim Ahammed
Mr. Arka Maiti
Mr. Aniruddha Singh
Ms. Gulsanwara Pervin
Ms. Saloni Bhattacharjee

...for the Petitioner.

Ms. Manali Ali

...for the State.

Ms. Akanksha Mukherjee
Mr. Sumit Biswas

...for the Private Respondent.

1. The petitioner entered into a contract with the private respondent nos. 3 & 4 for supply of materials. On the day the agreement was entered into by and between the parties, that is, 22nd March, 2019 the contractor had an independent status. The status of the contractor changed to MSME by virtue of registration in the UDYAM Portal on 22nd March, 2022.
1. Dispute and differences cropped up between the parties and the private respondents availed remedy under the MSMED Act, 2006. A conciliation proceeding was initiated which ultimately failed leading to the arbitration proceeding.
2. The petitioner is aggrieved by the same. It has been submitted that on the day the contract was entered, the private respondents were not an MSME. The contract in question was due to expire within a period of six months.

The supply could not be completed within the stipulated time period.

3. The petitioner contends that as on the date of entering into the contract, the status of the contractor was different and the contractor changed its status without the knowledge of the petitioner, accordingly, the petitioner cannot avail remedy under the MSMED Act, 2006 which provides for certain benefits to MSMEs.
4. Further allegation is that the conciliator has been made a member of the team of arbitrators. The petitioner challenges the involvement of the conciliator in the arbitration proceeding.
5. The petitioner refers to several decisions of the Court in support of the submission that the conciliator cannot be made a member of the team of arbitrators to decide the issue.
6. It has been submitted that the issue whether the conciliator can be made a member of the team of arbitrators is pending consideration before the Larger Bench of the Hon'ble Supreme Court and prayer has been made to adjourn the matter till a decision is delivered by the Hon'ble Supreme Court.
7. It is the categorical submission of the petitioner that commissioning has not been done in terms of the contract.
8. Learned advocate representing the private respondents denies the allegation of the petitioner. It has been submitted that the supplies were made in accordance with the contract and as per the request made by the petitioner. The date of supply will clearly indicate that by

implication the period within which the supply ought to have been made stood extended.

9. It has been submitted that the benefit under MSMED Act, 2006 be allowed in favour of the contractors/private respondents on and from the date of registration as MSME and the contractors be permitted to proceed with the ongoing arbitration with the change of the conciliator.
10. It has been submitted that out of the dues of more than rupees seven crores only two crores has been paid and huge sum is due and payable.
11. The issue as to whether retrospective effect can be given to the registration as MSME is pending consideration before the Hon'ble Supreme Court in ***Civil Appeal No. 3705 of 2024*** in the matter of ***NBCC (India) Ltd. Vs. State of West Bengal & Ors.*** reported in ***2025 SCC OnLine SC 73.***
12. Upon hearing the parties, it appears that, admittedly, the issue as to whether the conciliator can be a member of the team of arbitrators is pending consideration before the larger Bench of the Hon'ble Supreme Court in ***Civil Appeal No. 1016 of 2025*** in the matter of ***Tamil Nadu Cements Corporation Limited Vs. Micro and Small Enterprises Facilitation Council & Anr.*** reported in ***(2025) 4 SCC 1*** accordingly, the said issue as has been raised by the petitioners has to be adjudicated.
13. Relist the matter on 2nd August, 2025.

(Amrita Sinha, J.)