
Writ Petition Against Order Under Section 16 of the Arbitration Act Held Not Maintainable: Telangana High Court

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Introduction

In *VKA Constructions v. State of Telangana* [Writ Petition No. 956 of 2025], the Telangana High Court dismissed a writ petition challenging an order of the Micro and Small Enterprises Facilitation Council (MSEFC) that declined jurisdiction to adjudicate a dispute, holding that such an order is appealable under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996. The petitioner had sought relief under Article 226 of the Constitution of India, contending that the Council had erroneously declined jurisdiction on the ground that the contract in question was a works contract, and therefore non-arbitrable under the MSME Act.

The judgment reiterates the settled principle that where an effective alternative statutory remedy exists, writ jurisdiction should not be invoked except in exceptional cases. It also affirms that the question whether a contract is a works contract or otherwise is a mixed question of fact and law, which must ordinarily be resolved before the appropriate forum and not through a writ petition. In doing so, the High Court has reinforced the procedural boundaries of arbitral adjudication and the appropriate remedies available against jurisdictional determinations.

Brief Facts

VKA Constructions, a registered micro and small enterprise, entered into a contract with the State of Telangana for civil works relating to the construction of roads. Following completion of the works, disputes arose regarding alleged non-payment of dues under the contract. The petitioner invoked the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) and approached the Micro and Small Enterprises Facilitation Council (MSEFC) for resolution of the dispute.

The respondent-State raised a preliminary objection before the Council, contending that the contract was a pure works contract and therefore not amenable to adjudication under the MSME Act. It was argued that the petitioner had not supplied goods or rendered services within the meaning of Section 17 of the Act, and that the dispute was not arbitrable before the Council. Accepting this objection, the MSEFC passed an order declining jurisdiction, relying on a circular issued by the Ministry of MSME which stated that works contracts fall outside the scope of the Act.

Aggrieved by this decision, the petitioner filed a writ petition before the Telangana High Court under Article 226 of the Constitution of India, challenging the validity of the order. The respondent-State objected to the maintainability of the writ petition, contending that the petitioner had an alternative remedy under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996.

Issues and Submissions

The principal issue before the High Court was whether a writ petition under Article 226 was maintainable against an order of the MSEFC declining jurisdiction under the MSME Act. Closely linked to this was the question of whether the MSEFC's order was one passed under Section 16 of the Arbitration and Conciliation Act, 1996, and if so, whether the petitioner had an alternative statutory remedy by way of appeal under Section 37(2)(a) of the Act.

The petitioner submitted that the MSEFC had exceeded its jurisdiction by declining to entertain the dispute on the basis of a government circular. It was argued that the question whether the contract was a works contract or not required adjudication on the basis of evidence and could not have been summarily decided at the threshold. The petitioner further contended that the Council's refusal to entertain the dispute amounted to a denial of the statutory protection available under the MSME Act. The petitioner also sought to justify the invocation of writ jurisdiction by contending that no efficacious alternative remedy was available, since the MSEFC had declined to refer the dispute to arbitration and therefore no arbitral proceeding was pending. It was argued that the jurisdictional bar under Section 37 of the Arbitration Act would arise only if there had been an actual reference to arbitration.

On the other hand, the State of Telangana submitted that the order passed by the MSEFC was in substance a decision under Section 16 of the Arbitration Act, whereby a tribunal may rule on its own jurisdiction. It was submitted that such an order is appealable under Section 37(2)(a), and that the availability of an alternative remedy bars the exercise of writ jurisdiction. The respondent also contended that the MSEFC's reasoning, based on the nature of the contract and relevant government guidance, did not warrant interference in writ proceedings.

Findings of the High Court

The High Court dismissed the writ petition on the ground that the petitioner had an effective alternative remedy under the Arbitration and Conciliation Act, 1996. It held that the MSEFC, in declining jurisdiction, had exercised its power under Section 16 of the Act, which allows an arbitral tribunal to rule on its own jurisdiction. The High Court observed that such an order is expressly made appealable under Section 37(2)(a), which provides a statutory route for challenge before the appropriate forum.

The High Court rejected the petitioner's contention that the absence of a formal reference to arbitration excluded the application of Section 16. It noted that the MSEFC functions as an arbitral tribunal once conciliation fails, and that the jurisdictional ruling made by it was squarely within the scope of the Act. Therefore, the statutory scheme provided an adequate remedy, and the petitioner's choice to bypass that route and approach the writ court could not be sustained.

On the merits, the High Court observed that the determination whether a contract is a works contract involves factual examination of the terms and nature of the transaction. Such a question is not amenable to resolution in writ proceedings, particularly when alternative adjudicatory mechanisms exist. The High Court reiterated that judicial review under Article 226 is not available as a matter of right

and must be exercised with caution, particularly where the matter falls within a specialised statutory regime.

The High Court concluded that no exceptional circumstance had been made out to justify invocation of writ jurisdiction. The petitioner was accordingly relegated to the remedy of appeal under Section 37, and the writ petition was dismissed without prejudice to the petitioner's right to pursue that remedy.

Comment

The decision in *VKA Constructions v. State of Telangana (supra)* affirms the consistent judicial approach that writ jurisdiction is not to be invoked where a specific statutory remedy exists. By treating the order of the MSEFC as one passed under Section 16 of the Arbitration and Conciliation Act, 1996, the High Court rightly placed the dispute within the established framework for jurisdictional challenges in arbitration.

The High Court's reasoning is particularly relevant in the context of the MSME Act, where the Facilitation Council is empowered to function as both conciliator and arbitrator. Once conciliation fails, the Council assumes the role of an arbitral tribunal, and any ruling on its jurisdiction is subject to the provisions of the Arbitration Act. The petitioner's attempt to characterise the Council's decision as administrative or preliminary was correctly rejected, since the substance of the decision clearly reflected an adjudicatory stance on arbitrability.

Equally important is the High Court's observation that the classification of a contract as a works contract involves disputed questions of fact and law. This distinction carries significance under the MSME Act, as the entitlement to invoke its remedies depends on whether goods have been supplied or services rendered. Such classification cannot be conclusively determined in writ proceedings, and must instead be resolved by the forum competent to assess evidence and apply the statutory test.

The judgment also reinforces the jurisprudential boundary between constitutional review and statutory adjudication. By declining to entertain the writ petition, the High Court reaffirmed that the remedy under Article 226 is not an appeal in disguise, and that the availability of a statutory mechanism for redress must be respected.

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