IN THE HIGH COURT FOR THE STATE OF TELANGANA: HYDERABAD

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CIVIL MISCELLANEOUS APPEAL Nos.940, 941, 943, 944, 946, 952, 953 & 954 of 2015

Between:
Transmission Corporation of Andhra Pradesh Limited,
(APTRANSCO) Rep. by its Chairman and Managing Director,
Vidyuth Soudha, Somajiguda,
Hyderabad - 500 082 and Others.

Appellants

VERSUS

M/s. Sri Gowri Shankar Cable Industries,
K.M. Valasa - 532 440, Regidiamadalavalasa,
Mandal, Srikakulam District,
Rep. by its Managing Partner and Others.

Respondents

COMMON JUDGMENT PRONOUNCED ON: 21.05.2025

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes

3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

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Respondents

! Counsel for the Appellant(s)	: Vikram Pooserla, learned Senior Counsel representing Mr. Anup Koushik.
^Counsel for the Respondent(s)	: Mr. P. Sri Raghu Ram, learned Senior Counsel representing Mr. K. Raghu Babu, learned counsel for respondent No.1.

<GIST:
> HEAD NOTE:

? Cases referred
1. (2015) 3 Supreme Court Cases 49
2. (2019) 15 Supreme Court Cases 131
3. (2021) 9 Supreme Court Cases 1
4. (2019) 19 Supreme Court Cases 529
5. 2023 SCC OnLine SC Bom 2397
6. (2021) 18 Supreme Court Cases 790
7. (2008) 7 Supreme Court Cases 169

THE HONOURABLE SRI JUSTICE P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

CIVIL MISCELLANEOUS APPEAL Nos.940, 941, 943, 944, 946, 952, 953 & 954 of 2015

COMMON JUDGMENT: *(per the Hon'ble Sri Justice P.Sam Koshy)*

Since the issue raised in the instant appeals is one and the same, they are taken up for analogous hearing and are decided by way of this common judgment.

2. Heard Mr. Vikram Pooserla, learned Senior Counsel representing Mr. Anup Koushik, learned counsel for the appellants and Mr. P. Sri Raghu Ram, learned Senior Counsel representing Mr.K. Raghu Babu, learned counsel for respondent No.1.

3. For convenience, the facts in Civil Miscellaneous Appeal No.940 of 2015 are discussed hereunder.

4. The instant is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (briefly, the 'A&C Act' hereinafter). The challenge is to the order dated 20.07.2015, in Arb.OP.No.1641 of 2003, passed by the learned XIV Addl. Chief Judge, (Fast Track Court), City Civil Court, Hyderabad.

5. *Vide* the impugned order; the learned XIV Addl. Chief Judge had dismissed the petition filed under Section 34 of the A&C Act by the appellant herein affirming the award dated 16.11.2002, in Case No. 29/3/1/608, passed by respondent No.2 / The A.P. Industry Facilitation Council (for short, the 'Facilitation Council').

6. The facts relevant for adjudication of the instant appeal are that the appellant had made certain purchases of AAA and ACSR Conductors from respondent No.1 somewhere in the year 1996. The entire demand as raised by the appellant was duly supplied by respondent No.1. However, after the supply was made, the appellant failed in honoring the payment schedule and there was a considerable delay in making the payments and, in addition, there were some bills also which were outstanding. The respondent No.1, thereafter, filed a claim petition before the Facilitation Council for an amount of Rs.32,63,673/- along with interest and also directed the appellant to pay the balance of outstanding amount. The Facilitation Council after hearing both the parties, *vide* its award dated 16.11.2002, allowed the claim petition to the extent of directing the appellant to pay an amount of Rs.24,14,382/- and also awarded 10% simple interest post award on the said amount.

7. This award of the Facilitation Council was subjected to challenge by the appellant under Section 34 of the A&C Act before the learned XIV Addl. Chief

Judge. The learned XIV Addl. Chief Judge dismissed the said petition, leading to filing of the instant appeal under Section 37 of the A&C Act.

8. The claim petition in the instant case was filed by respondent No.1 before the Facilitation Council on 10.05.2001.

9. The primary challenge by the appellant before the Facilitation Council as also before the learned XIV Addl. Chief Judge was that the claim petition was barred by limitation. The Facilitation Council had not accepted the said objection primarily on the ground that neither the Interest on Delayed Payments To Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short, the 'Act of 1993'), nor does the Micro, Small and Medium Enterprises Development Act, 2006 (for short, the 'Act of 2006') prescribe any period of limitation for any of the parties to approach Facilitation Council in respect of their claim. The same view was also accepted by the learned XIV Addl. Chief Judge while dismissing the Section 34 petition.

10. In the instant appeal, under Section 37 of the A&C Act also, the contention of the learned Senior Counsel for the appellant is that the aspect of limitation has not been satisfactorily considered by the learned XIV Addl. Chief Judge.

11. Learned Senior Counsel for the appellant in support of his contentions relied upon the following decisions:

a) **Associate Developers vs. Delhi Development Authority**[1]

b) **SSangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI)**[2]

c) **Project Director, National Highways NO. 45 E and 220 National Highways Authority of India vs. M. Hakeem and Another**[3]

d) **Shanti Conductors Private Limited and Another vs. Assam State Electricity Board and Another**[4]

e) **Sonali Power Equipment, Through its Managing Director Shri Vijay Krushnarao Sontakey vs. Chairman, Maharashtra State Electricity Board and Others**[5]

12. *Per contra*, the learned Senior Counsel for respondent No.1, referring to Section 10 of the Act of 1993 contended that the provisions under the said Act have an overriding effect and, therefore, since the Act of 1993 in itself does not prescribe any period of limitation for approaching the Facilitation Council for redressal of grievances, it would amount to there being no specified period of limitation available for a person aggrieved for approaching the Facilitation

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[1] (2015) 3 Supreme Court Cases 49
[2] (2019) 15 Supreme Court Cases 131
[3] (2021) 9 Supreme Court Cases 1
[4] (2019) 19 Supreme Court Cases 529
[5] 2023 SCC OnLine SC Bom 2397

Council. According to the learned Senior Counsel for respondent No.1, the Act of 1993 being a special Act, which otherwise does not prescribe any limitation, therefore, the provisions of Section 43 of the Arbitration and Conciliation Act or for that matter the provisions of the Limitation Act would not be applicable to the instant case. In view of the same, learned Senior Counsel for respondent No.1 contended that the view taken by the Facilitation Council while passing the award as also the stand taken by the learned XIV Addl. Chief Judge while rejecting the contention of limitation raised by the appellant was justified.

13. According to the learned Senior Counsel for respondent No.1 the Act of 1993, so also the Act of 2006, does not prescribe any time limit and, therefore, there cannot be an objection of the claim being barred by limitation. It was also the contention that the liability that of the appellant is a continuous liability and therefore is a continuous cause of action as per Section 8 of the Act of 1993 and Section 22 of the Act of 2006 and, in view of the same, the appellant who is statutorily bound to acknowledge the liability on day-to-day basis in their pubic accounts, the question of limitation arising out of such transactions would not arise at all.

14. Learned Senior Counsel for respondent No.1 in support of his contentions relied upon the following decisions:

a) **Shilpi Industries and Others vs. Kerala State Road Transport Corporation and Another**[6]

b) **Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Others**[7]

15. From plain reading of the order passed by the Facilitation Council what would be revealed is the fact that so far as the relationship between the appellant and respondent No.1 being that of purchaser and supplier respectively is not in dispute. The appellant placed orders with respondent No.1, and the respondent No.1, in turn had supplied the entire conductors / cables / wires as demanded by the appellant and the entire supply was duly received by the appellant. The appellant was, thereafter, for the supply made required to make payment within 30 days from the date of receipt of goods. It is here that the appellant had defaulted or failed in making the payments. Though, subsequently some payments were made, since there was a substantial delay in making payments, a claim petition was filed by respondent No.1 before the Facilitation Council claiming interest for delayed payments so made and also a claim was raised for certain outstanding payments to be made.

16. What is also relevant at this juncture is the fact that the Facilitation Council in the course of adjudicating the matter, framed three issues based on the pleadings that had come before it, which are as follows:

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[6] (2021) 18 Supreme Court Cases 790
[7] (2008) 7 Supreme Court Cases 169

1. Whether the claimant proved beyond doubt that the supplier under the contract fall within the expression “Small Scale and Ancillary Industrial Undertakings act”?

2. Whether the claimant established the claim of payment of interest in accordance with the provisions of the Act?

3. Whether the claimant is entitled to future interest on the amounts found due as per provisions of the Act?

17. Another aspect which needs appreciation at this juncture is the fact that respondent No.1 relied upon all the documents and correspondences made between the parties in respect of purchases and supply made and in respect of the payments those which were being sought for by respondent No.1. However, as regards the appellant, except for his statement of defence, there was no document or evidence which the appellant could lead before the Facilitation Council in support of his defence or to falsify and get the claim rejected put forth by respondent No.1. Based upon the documentary evidence available on record, the Facilitation Council found that there was no dispute so far as the respondent No.1 having supplied the conductors / cables / wires to the appellant. There was also no dispute so far as the appellant having not made the payments within the time prescribed and there was a delay on the part of the appellant in clearing the dues. There was also no dispute so far as the entitlement of respondent No.1 under the provisions of the Act of 2003, so also the entitlement under the Act of 2006 is concerned. There is also no dispute so far as respondent No.1 falling within the purview of small scale industrial undertaking in terms of The Industries (Development and Regulations) Act, 1951.

18. It is also necessary at this juncture to take note of the fact that the Act of 2003 and the Act of 2006 were primarily enacted in order to permit and develop small scale sectors in India. These Acts were enacted to provide and facilitate in enhancing the competitiveness. These Acts were framed taking into consideration the inadequate working capital in small scale or ancillary industrial undertaking and which proved to be an endemic term. Hence, to boost up their financial condition and with a view to encourage prompt payment of money by buyers, these statutes were framed providing mandatory payments of interest of outstanding money in the case of default.

19. When we keep in mind the object and reasons for enactment of the Act of 1993 and the Act of 2006, and also the purpose and intention of having the Facilitation Councils, we may feel that the finding arrived at by the Facilitation Council cannot be found fault with. Nonetheless, when we look at the order passed by the Facilitation Council from the legal point of view, particularly when hearing an appeal under Section 34 or for that matter under Section 37 of the A&C Act, what we need to understand is, or what we need to consider is, 'whether the finding of the Facilitation Council as also the Court which has decided the Section 34 petition so far as holding that the provisions of the

Limitation Act does not apply in proceedings initiated under the Act of 1993 is valid or not?'

20. We are of the considered opinion that the said matter is no longer *res integra* as the Hon'ble Supreme Court has laid to rest the said issue in its judgment in the case of **Shanti Conductors Private Limited and Another** (supra). The Hon'ble Supreme Court in paragraph Nos.79, 80 and 81 has specifically dealt with the issue, which for ready reference is reproduced hereunder:

> *"**79.** …………The overriding effect was given to the provisions of the Act which were contained in the Act. Section 10 provided that overriding effect is given to the provisions of the Act over any inconsistent law for the time being in force. It simply meant that if there is anything inconsistent in any other law to the provisions of the Act, the provisions of the Act shall prevail and override any inconsistent law. For example, when Section 4 requires payment of interest at particular rate on delayed payment the said rate shall have overriding effect to rate of interest provided in any other law."*
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> ***80.**………The trial court fell in error in reading overriding effect given in Section 10 of the Limitation Act also. There is no provision in the 1993 Act pertaining to limitation, the provisions of the Limitation Act pertaining to filing suit shall continue to operate there being nothing contrary or overriding under the 1993 Act. Section 10 will operate only with regard to expressed provisions contained in the 1993 Act which shall be given overriding effect but reading Section 10 to the effect that it shall override the Limitation Act is not correct interpretation of Section 10 and the trial*

court fell in error in relying on Section 10 in holding that the Limitation Act will not apply.

81. *We thus are of the view that the Limitation Act, 1963 is fully applicable with regard to money suit filed by the appellant hence, the question of limitation has to be answered as per the Limitation Act, 1963. The limitation for suit for recovery of interest under the 1993 Act is a suit of nature which shall be covered by Part X Article 113 of the Schedule which is to the following effect:*

"Part X-Suits for which there is no prescribed period

113. *Any suit for which no period of limitation is provided elsewhere in this schedule*	*Three years*	*When the right to sue accrues"*

21. Recently, the three Judge Bench of the Bombay High Court also had an occasion of dealing with the said issue in the case of **Sonali Power Equipment** (supra), wherein the three Judge Bench while answering a reference made to it, in paragraph No.72 has held as under:

*"**72.** It was also held that the right to sue accrued not on the date of the agreement but on the day of supply, considering which it was held that the claim was barred by time. It is necessary to note that Section 10 of the Interest on Delayed Payment to the Small Scale and Ancillary Industrial Undertakings Act, 1993 gave the provisions thereof an overriding effect. No doubt true that the claims under the Interest on Delayed Payment to the Small Scale and Ancillary Industrial Undertakings Act, 1993, mandated the recovery to be made by way of a suit or other proceeding under any law for the time being in force, by virtue of Section 6(1) therein, that however does not in any way deter from the fact that even for claims under the Interest on Delayed Payment to the Small Scale and Ancillary Industrial Undertakings Act, 1993, the law of*

> *limitation was held to be applicable, in spite of there being nothing in the said Act of 1993 to indicate its applicability and the overriding effect of Section 10 thereof was held to mean not to override the Limitation Act…………………………..”*

The aforesaid view of the Bombay High Court was following the judgment of the Hon’ble Supreme Court in the case of **Shanti Conductors Private Limited and Another** (supra).

22. In the light of the aforesaid authoritative decision by the Hon’ble Supreme Court and also by the three Judge Bench of the Bombay High Court, we are of the considered opinion that the finding arrived at by the Facilitation Council on the aspect of limitation is not proper, legal and valid. Neither is the decision of the learned XIV Addl. Chief Judge which decided the Section 34 petition legally sustainable. In view of the same, the findings of the Facilitation Council as also the learned XIV Addl. Chief Judge deserves to be and are accordingly set aside so far as its finding on the aspect of limitation is concerned.

23. The next question to be decided is, the consequence of such a finding. Once when this Bench holds that the finding of the Facilitation Council as also the learned XIV Addl. Chief Judge to be bad in law on the aspect of limitation, what needs to be considered is:

1) Whether in fact there was any delay caused on the part of respondent No.1 in raising the claim before the Facilitation Council?

2) What are the relevant dates which have been brought before the Facilitation Council as also before the learned XIV Addl. Chief Judge?

3) Some of the relevant dates which would be necessary to decide the period of limitation are:

    a) The dates on which the payments fell due to respondent No.1.

    b) The different dates on which the payments were made to respondent No.1 against each of the purchase order.

    c) When was the date on which the appellant had refused to honor the claim of respondent No.1 so far as the claim for interest on delayed payment.

4) Keeping in view the aforesaid dates, whether the claim petition filed by respondent No.1 on 10.05.2001 was barred by limitation under the Limitation Act?

24. Hence, we are of the considered opinion that for deciding the issue of limitation, the matter needs to be remanded back wherein the appellant would show before the Facilitation Council the relevant dates from which the period of limitation would start and whether the claim was in fact barred by limitation or not.

25. The instant appeal therefore stands partly allowed. Consequently, the batch of Civil Miscellaneous Appeals also stand partly allowed.

26. As a sequel, miscellaneous applications pending if any, shall stand closed. However, there shall be no order as to costs.

P.SAM KOSHY, J

N.TUKARAMJI, J

Date: 21.05.2025

Note: L.R. Copy to be marked.
(B/o)GSD