

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

WP(C).No. 13492 of 2014 (J)

PETITIONER:

V.A. JOSE
PROPRIETOR, M/S.T & J MARKETING COMBINES, KOKKALAI
THRISSUR-680 021.

BY ADVS.SRI.K.PAUL KURIAKOSE
SRI.K.A.ANISH

RESPONDENTS:

1. RAJESH G. THAYYIL
PROPRIETOR, M/S.THAYYIL INDUSTRIES, PLOT NO.27
INDUSTRIAL DEVELOPMENT PLOT, KALAMASSERY
ERNAKULAM DISTRICT-683 109.
2. THE MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
KERALA, DIRECTORATE OF INDUSTRIES AND COMMERCE
VIKAS BHAVAN, THIRUVANANTHAPURAM-695 001.

R1 BY ADV. SRI.K.ANAND
R2 BY GOVERNMENT PLEADER SRI.C.K.JAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 13492 of 2014 (J)

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1. PHOTOSTACT COPY OF 1ST RESPONDENT APPLICATION DATED
31/3/2012 BEFORE THE 2ND RESPONDENT
- EXT.P2. PHOTOSTACT COPY OF OBJECTIONS OF THE PETITIONER DATED
27/1/2013.
- EXT.P3. PHOTOSTACT COPY OF PETITION DATED 5/4/2013 FILED BY THE
PETITIONER SEEKING TO HEAR THE QUESTION OF MAINTAINABILITY
OF EXT.P1 ORIGINAL APPLICATION BEFORE THE 2ND RESPONDENT
- EXT.P4. PHOTOSTACT COPY OF ORDER DATED 25/4/2014 PASSED BY THE
2ND RESPONDENT

RESPONDENTS' EXHIBITS

NIL

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.

W.P.(C).No.13492 of 2014

Dated this the 21st day of August, 2015

JUDGMENT

The writ petition is filed challenging Ext.P4 order of the Micro And Small Enterprises Facilitation Council, Kerala by which the application preferred by the first respondent under Micro, Small and Medium Enterprises Development Act, 2006 (hereafter referred to as "the Act") was found to be maintainable. It was the case of the petitioner that he had been appointed as the distributor of the first respondent firm but all accounts between the petitioner and the 1st respondent had been settled and that no amounts are due from the petitioner to the first respondent. Further, it is contended that the first respondent's undertaking is not one which comes within the meaning of the term enterprise as defined in the Act . However, the 1st respondent had approached the second respondent under Section 17 of the Act and the second respondent had held that the application preferred by the first respondent is maintainable

by Ext.P4 order.

2. The petitioner challenges the said order on the ground that the finding of the 2nd respondent is erroneous as all existing Micro and Small enterprises have to file a memorandum of enterprise as provided in the Act within 180 days from the commencement of the Act in order to be entitled to any benefit under the Act. An interim order dated 13.8.2014 was issued by this court staying all proceedings pursuant to Ext.P4.

3. The first respondent has thereafter entered appearance and filed a detailed counter affidavit pointing out that his firm was registered as Small Scale Industrial Unit as early as in 1973 and had, after commencement of the Act, been classified as Micro Industry and has secured registration as such after filing its memorandum of enterprise by Ext.R1(c) dated 17.1.2008. It is the case of the first respondent that the provisions of 2006 Act apply to it rendering it eligible to pursue the remedies available under the Act. It is seen that Ext.P1 application of the first respondent was preferred as early as on 31.3.2012. The petitioner had raised objections in January 2013 before the

second respondent and sought the consideration of the question of maintainability under section 8 as a preliminary issue on 5.4.2013. It was thereafter that Ext.P4 order was issued by the second respondent specifically finding that the proceedings are maintainable before it in terms of the Act.

4. It is seen that Ext.P1 has been preferred by the 1st respondent seeking initiation of action under the Act. The 1st respondent has preferred Ext.P1 application as early as on 31.03.2012. Objections have been preferred by the respondent which have been considered and Ext.P4 order issued.

5. Section 8 of the Micro, Small and Medium Enterprises Development Act, 2006 reads as follows:-

"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, shall file the memorandum of micro, small or, as the case may be, of 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 by person who, before the commencement of this Act, established-

- (a) A small scale industry and obtained a registration certificate, may, at his discretion; and
 - b) an industry 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, having investment in plant and machinery or more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O.477(E), dated the 25th July, 1991 file an Industrial Entrepreneurs' Memorandum, shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.
- (2) The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.
- 3) The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified, by notification, by the Central Government.
- 4) The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.
- 5) The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2).”

6. The 2nd respondent has, by Ext.P4 order held that a small scale industry which was established before the commencement of the 2006 Act and obtained the registration certificate may, at its discretion, within 180 days from the commencement of this Act file the memorandum in accordance with the provisions of the Act. It is held that the mandatory requirement of filing the Memorandum of

Enterprise within 180 days would apply only in the case of industries specified in sub-clause (b). It has been held by the 2nd respondent that the 1st respondent concern is not an industry coming within sub-clause (b) of the proviso to section 8(1) of the Act. It is the definite case of the 1st respondent that it had filed Entrepreneurs' Memorandum as provided in the Act which had been duly registered before Ext.P1 was preferred before the 2nd respondent.

In such circumstances, the finding in Ext.P4 to the effect that the filing, within 180 days of the Entrepreneurs' Memorandum is not mandatory in the case of existing industries cannot be faulted. Challenge to Ext.P4 fails and the writ petition is dismissed. The 2nd respondent is therefore free to proceed with the adjudication on Ext.P1, in accordance with law.

Anu Sivaraman, Judge

al/sj