

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 21985 of 2014 (W)

PETITIONER(S):

**T.M. JAMALUDHEEN,
MANAGING PARTNER, AYURVED INDIA,
OORAKAM, THRISSUR.**

**BY ADVS.SRI.K.B.ARUNKUMAR,
SRI.M.P.SHAMEEM AHAMED.**

RESPONDENT(S):

- 1. THE MICRO AND SMALL ENTERPRISES
FACILITATION COUNCIL OF KERALA,
(DIRECTORATE OF INDUSTRIES AND COMMERCE),
VIKAS BHAVAN, THIRUVANANTHAPURAM, PIN- 695 001.**
- 2. JAYA D.AVANOOR, PROPRIETRIX,
M/S.LOHASHILPI PACKS, ANAMANGAD,
PERINTHALMANNA, PIN -679 357.**

**R1 BY GOVT. PLEADER SRI.MANOJ P.KUNJACHAN.
R2 BY ADVS. SRI.ANIL SIVARAMAN,
SMT.RAJI VINCENT.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-07-2015, ALONG WITH WP(C).NO.23258 OF 2014, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

**EXHIBIT-P1: TRUE COPY OF THE APPLICATION SUBMITTED BY THE
2ND RESPONDENT.**

EXHIBIT-P2: THE TRUE COPY OF THE COUNTER FILED BY THE PETITIONER.

EXHIBIT-P3: THE TRUE COPY OF REPLY FILED BY THE 2ND RESPONDENT.

**EXHIBIT-P4: THE TRUE COPY OF THE ORDER DATED 23.06.2014 PASSED BY
THE 1ST RESPONDENT IN O.A.NO.11/2011.**

RESPONDENT'S EXHIBITS:-

**EXT.R2A COPY OF THE REPLY AFFIDAVIT DATED 04/05/2013 IN
O.A.11/2011.**

//TRUE COPY//

PA. TO JUDGE

rs.

K. VINOD CHANDRAN, J.

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Dated this the 22nd day of July, 2015

J U D G M E N T

The petitioner in both the writ petitions challenge the two separate awards passed by the 1st respondent herein constituted under the Micro, Small and Medium Enterprises Development Act, 2006 (for brevity, 'the Act of 2006). In the nature of the orders to be passed, this Court need not go into the facts. Suffice it to state that the petitioner is an Ayurvedic Medicine manufacturer and the respective 2nd respondents are registered under the Act of 2006.

2. The respondents had supplied certain materials to the petitioner, which the petitioner submits were not in accordance with its needs and the specification it had made in the purchase orders. However, disregarding the request of the petitioner to take back the mechanaries, the 2nd respondents

approached the 1st respondent for recovery of the alleged amounts due, on the supplies made under Section 17 of the Act of 2006. The respondent however denies the submission of the petitioner that there was any intimation of dissatisfaction made to the 2nd respondent and the objections were raised only when the 2nd respondent approached the 1st respondent.

3. The petitioner challenges the two separate awards passed by the 1st respondent Council, granting recovery of the amounts sought for by the 2nd respondent. The primary question raised by the learned Counsel for the 2nd respondent is the maintainability of a writ petition under Article 226 of the Constitution of India going specifically by the provisions of Section 18 of the Act of 2006.

4. Section 18 of the Act of 2006 is a non-obstante clause enabling any party to a dispute with regard to any amounts due under Section 17, to make a reference to the Micro and Small Enterprises Facilitation Council. Sub-section (2) of

Section 18 of the Act of 2006 deems the said reference to be an initiation of conciliation which can either be undertaken by the Council itself or on its reference, by any other body. The provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act of 1996') are specifically made applicable to such disputes and the conciliation initiated under Section 18 is deemed to be one under Part III of the Act of 2006.

5. Sub-Section (3) of Section 18 of the Act of 2006 refers to the procedure to be adopted on the conciliation not fructifying; when the Council itself has to take up the dispute for arbitration or refer it to another Body. In such cases provisions of the Act of 2006 applies in toto, to any award passed by the Council under the Act of 2006. Hence the remedy available would also be under the Act of 1996 and not a writ petition under Article 226.

6. With respect to the filing of the proceedings before

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the District Court under Section 34 of the Act of 1996, if any limitation is provided, the pendency of the writ petitions from 21.08.2014 and 01.09.2014 respectively before this Court shall be considered as bona fide proceedings initiated by the petitioner against the awards, under Section 14 of the Limitation Act, 1963.

Leaving open such remedies, the writ petition would stand closed, without any finding on merits.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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// true copy //

P.A to Judge.