

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No. 13639 OF 2014

ORDER:

The State Water and Sanitation Mission is the petitioner herein. The Writ Petition is directed against the Award passed by the 1st respondent, the Andhra Pradesh Micro and Small Enterprises Facilitation Council, Hyderabad on 05.10.2013 in the proceedings initiated before it by the 2nd respondent company.

The 2nd respondent company is a small-scale industry. It has filed a claim petition before the 1st respondent initially seeking Rs.47,24,823/-. It is the case of the 2nd respondent that pursuant to the e-procurement for work, supply, delivery, installation and commissioning of stand alone water purification systems at various government schools in rural areas, its bid was accepted and the necessary agreement for execution of the work in five districts has been entered into by and between the parties on 26.02.2010. It is the case of the 2nd respondent that in spite of the execution of the works, it has not been paid for the works so turned out. It is therefore, claimed by the 2nd respondent that an amount of Rs.33,29,881/- was, in fact, due and payable by the petitioner herein and since there was an inordinate delay in settling the payments, interest of Rs. 13,94,942/- was also claimed thereon, thus totalling to Rs.47,24,823/-.

The 1st respondent has been established by the State Government, in exercise of the power available under Section 20 read with Section 21 of the Micro, Small and Medium Enterprises Development Act, 2006 (henceforth referred to as 'the Act'). The Parliament has noticed that small-scale industry is facing lots of difficulties to stay put in the competitive industrial environment and for it to flourish, settlement of its disputes and dues must be attended to on priority basis, so that the small-scale industrial entrepreneurs can be developed duly enhancing their competitiveness with rest of the

entrepreneurs. Chapter IV of this Act provided for various measures for promotion, development and enhancement of competitiveness of Micro, Small and Medium Enterprises. Chapter V dealt with the delayed payments to Micro and Small Enterprises. Section 15 of the Act has thrust that where any supplier supplies any goods, or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or where there is no agreement in this behalf, before the appointed date, provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of the deemed acceptance. The expression “appointed day” has been defined in Section 2(b) of the Act as the day following immediately after the expiry of the period of 15 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. It was explained therein that ‘the day of acceptance’ means “the day of the actual delivery of goods or rendering of services”. Thus, Section 15 of the Act has attempted at a tight time-frame limit within which the payments are required to be made to small-scale entrepreneurs. Section 16 has thrust a further liability on the defaulting party making him liable to pay compound interest with monthly rests at three times of the bank rate notified by the Reserve Bank of India. Under Section 18, notwithstanding anything contained in any other law for the time being in force, any party to a dispute may make a reference to the Micro and Small Enterprises Facilitation Council for recovery of the monies due. Section 20 of the Act required the State Government to establish one or more Micro and Small Enterprises Facilitation Councils and Section 21 of the Act dealt with the composition of such a Council. The Director of Industries in the Department of the State Government having administrative control over small-scale industries is made the Chair-person of the Facilitation Council.

The 2nd respondent herein has made a reference under Section

18 of the Act for recovery of the aforementioned sum of Rs.47,24,823/- . It appears, it has filed on 04.10.2013 a revised claim claiming a sum of Rs.1,46,99,714/-, but however, the 1st respondent Facilitation Council passed orders the very next day i.e. on 05.10.2013 directing the petitioner herein to pay a sum of Rs.68,29,506/- towards principal and Rs.59,93,743/- towards interest as on 30.09.2013, totalling to Rs.1,28,23,249/-. Further interest with monthly rests at three times the bank rate prevailing as on the date of the Award was also made as payable. It is this Award, which is challenged in this Writ Petition.

It is not in dispute that the 2nd respondent has revised its claim and filed it on 04.10.2013 before the Council and the Council has passed its Order the very next day, namely 05.10.2013. It is now urged before me specifically that the petitioner herein had not been provided with a proper opportunity to meet the revised claim of the 2nd respondent and bring out as to how it is not tenable. Therefore, it is urged that the order of the Council dated 05.10.2013 is bad for violation of the principles of natural justice.

The learned counsel for the 2nd respondent Sri Karthik had raised two-fold objection for entertaining this Writ Petition; the first is that Section 19 of the Act sets out that no application for setting aside any decree, award or other order made by the Council shall be entertained by any Court unless the appellant has deposited with it 75% of the amount in terms of the decree, award or the order in the manner directed by such Court. Sri Karthik therefore, would submit that unless this pre-condition is met with, the Court has no power to entertain this Writ Petition. The learned counsel would further submit that the Order of the 1st respondent Council is liable to be challenged under Section 34 of the Arbitration and Conciliation Act, 1996 and that being an effective alternative remedy, the petitioner could not have bypassed the same.

It is important to notice that the provisions contained in Sections

15 to 23 of the Act have been given overriding effect by the Parliament, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. It is, undoubtedly, true that by providing for such an overriding effect to the provisions contained in Sections 15 to 23 of the Act, the Parliament intended to protect the interests of Micro, Small and Medium Enterprises and promote the competitiveness of theirs, so that they can stay afloat with other industries. But these provisions, in my opinion, cannot be read as excluding the judicial review power of the High Court under Article 226 of the Constitution. For the present, I am not pronouncing any final opinion on such an issue, in view of the conclusion to which I have arrived, as set out herein below. Judicial review power vested with the constitutional Courts springs from the very Constitution. Therefore, even by a statutory exercise, no Legislature can seek to curtail or diminish that power totally. It may be a different aspect as to when the Court should really be called upon to exercise such power. However, where principles of natural justice are breached, it is only appropriate that the error should be set right immediately. Lest, the very exercise of power carried out in flagrant violation of the principles of natural justice would hold the field unjustly. This is one major reason that is weighing with my mind when I generated a debate in this regard at the Bar. I have also suggested that the matter should be sent back to the Council for a proper consideration duly hearing the petitioner herein. This apart, the Award has not assigned any specific reasons. As is too well-known, reasons are the live links, which bring out the application of mind by the decision-maker. The reasons offer clarity and fairness of approach adopted while deciding the issue. It is one thing to say that very exhaustive reasons may not have been required to be spelt out like a well-trained Court would have while adjudicating a *lis* brought before it, but however, the 1st respondent Council, which has been clothed with the power to adjudicate and pronounce upon an order relating to payment of arrears and its recovery, it is essentially

required of it to assign reasons as to why it has reached the conclusion to which it did. Lest, whole exercise would turn itself into an arbitrary fiat. Therefore, for sheer violation of the principles of natural justice in providing a fair and effective opportunity to the petitioner to meet the case set up by the 2nd respondent in the form of a revised claim, the Award passed by the 1st respondent on 05.10.2013 deserves to be set aside.

I must also necessarily place on record my appreciation of the efforts made by Sri Karthik, learned counsel for the 2nd respondent. The Managing Director of the 2nd respondent has filed a sworn affidavit yesterday. It is agreed that without prejudice to the 2nd respondent's objections with respect to entertainability or maintainability of the Writ Petition and also without prejudice to the merits of the claim of the 2nd respondent, dated 04.10.2013, for a sum of Rs.1,46,99,714/- before the 1st respondent and interest thereon, the 2nd respondent is agreeable for the matter to be remanded to the 1st respondent. The affidavit of the 2nd respondent has been taken on record.

Accordingly, the Order dated 05.10.2013 passed by the 1st respondent is set aside. The claim of the 2nd respondent is restored to the 1st respondent and the 1st respondent shall provide an opportunity to the petitioner herein to file its statement in defence of the claim of the 2nd respondent in a time span not exceeding 15 days to do so and thereafter, provide an opportunity of hearing to both the petitioner as well as the 2nd respondent herein who is the claimant and then pass an Award setting out briefly the reasons why the conclusions have been arrived at by it. It is made clear that the monies paid to the 2nd respondent, pursuant to the interlocutory order passed by this Court on 16.12.2014, will abide by the result of the claim now to be decided by the 1st respondent. The 1st respondent is further directed to complete

the entire exercise in as quicker time as is possible, preferably within a maximum period of two months from the date of receipt of a copy of this order.

With this, the Writ Petition stands allowed. No costs.

Consequently, the miscellaneous applications, if any shall stand disposed of.

NOOTY RAMAMOHANA RAO, J

25th June 2015

Issue CC in three days.
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