

In the High Court of Judicature at Madras

Dated : 02.1.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Transfer Original Petition No.627 of 2006

Tamil Nadu Electricity Board, rep.
by its Chief Manager (Material &
Management), Chennai-2.

...Petitioner

Vs

1.M/s.Lamark Electricals, Chennai-32.

2.Thiru K.Skandan, IAS, Regional
Industry Facilitation Council,
Chennai Region, Chennai-2.

...Respondents

PETITION under Section 34 (1) and (2)(a) of the Arbitration and Conciliation Act, 1996 to set aside the award dated 27.7.2001 passed by the second respondent in favour of the first respondent and to award costs.

For Petitioner : Mr.N.C.Ramesh, SC for
Mr.T.Sivaprakasam
For Respondent-1: No appearance

ORDER

This is a petition filed by the petitioner under Section 34(1) and (2)(a) of the Arbitration and Conciliation Act, 1996. The above petition was originally filed before the City Civil Court and taken on file as O.P.No.159 of

2003. Subsequently, as per the order passed by the Hon'ble Division Bench in O.S.A.No.102 of 2004 dated 21.1.2006 read with R.O.C.No.1542/2006 (O.S.) dated 26.4.2006, this petition has been transferred to this Court and renumbered as Transfer O.P.No.627 of 2006.

2. Heard Mr.N.C.Ramesh, learned Senior Counsel, assisted by Mr.T. Sivaprakasam, learned Standing Counsel for the Tamil Nadu Electricity Board. Though the first respondent was served and their name is printed in the cause list, none appears for the first respondent-9 nor there is any representation. Earlier, one Mr.S.Ramesh Kumar, learned counsel filed vakalat on behalf of the first respondent. However, the vakalat has been returned. The order sheet says that from 2011 onwards, the Registry had been directed to verify and print the correct name of the counsel, who entered appearance for the first respondent. Till date, none entered appearance for the first respondent. Therefore, this Court proceeded to dispose of the matter after hearing the learned Senior Counsel for the petitioner.

3. The first respondent herein filed a claim statement before the second respondent under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter called as the MSMED Act). In the said claim statement, the first respondent claimed that they had supplied

ACSR conductors to the petitioner and as per the agreement, 98% of the payment alone had been received and the balance of 2% is due against the goods received, which had to be paid within 90 days from the date of receipt of material at site in good condition subject to approval of test certificate, etc. Therefore, the first respondent contended that the balance dues are yet to be received from the petitioner - Board.

4. On receipt of the claim statement, notice was ordered to the petitioner Board and its Assistant Electrical Engineer (Material Management) appeared before the second respondent and the specific contention of the petitioner was that the first respondent clubbed all the purchase orders together and made a claim for payment of interest and that since the purchase orders started from the year 1995 onwards, they wanted time to file counter. However, the second respondent, without affording an opportunity, passed the impugned award, by recording as if the petitioner Board appeared before the Council and sought 60 days time to settle the dues.

5. The so called settlement said to have been agreed to by the Assistant Electrical Engineer is not borne out by any records placed before the Council.

6. At this juncture, it will be relevant to point out that the second respondent has to consider the claim petitions, which have been referred for adjudication strictly in accordance with the provisions of the MSMED Act. Section 18 of the MSMED Act deals with the Council - the second respondent herein. In terms of Sub-Section (2) of Section 18 of the MSMED Act, on receipt of any reference under Sub-Section (1), the Council itself shall either conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate disputes resolution services by making a reference to such institution or centre for conducting conciliation and the provisions of Section 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply. In case the conciliation is initiated under Sub-Section (2), Sub-Section (3) provides that the Council itself shall either take up the dispute for arbitration or refer it to an institute or centre for such arbitration.

7. In the instant case, though the second respondent referred as if the official of the Electricity Board appeared and requested time to settle the dues, it did not insist upon producing any written undertaking. Furthermore, the learned Arbitrator should have examined as to whether the Assistant Electrical Engineer is competent to give such an undertaking. Even assuming that he was competent, then the proper procedure would be to conduct conciliation proceedings and defer the matter till the settlement proposal is put in writing in proper format and the dues are settled. Thus, in the instant

case, the procedure contemplated under Section 18(2) of the MSMED Act was not complied with. This is sufficient to hold that the petitioner Board did not have proper notice and the award is passed against the basic principles of natural justice.

8. In the light of the above, the above original petition is allowed, the impugned award is set aside and the matter is remitted back to the second respondent for a fresh consideration strictly in accordance with the provisions of the Statute.

02.1.2017

Internet : Yes

RS

T.S.SIVAGNANAM,J

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