

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.23252 of 2018
and
W.M.P.Nos.27131 & 27132 of 2018

M/s. Sugesan Transport Pvt. Ltd.,
Represented by its Authorized Signatory
Mr.Rakesh P Sheth,
No.7, Second Canal Cross Road,
Gandhi Nagar, Adyar, Chennai - 600020.Petitioner

Vs.

1. Micro Small and Medium Enterprises Facilitation Council,
Chennai Region, SIDCO Corporate Building,
Guindy, Chennai - 600032.
2. M/s.Rikesh Cranes,
Formerly known as M/s.CTR Cranes,
No.29/14, Lodd Govindas Nagar Road,
Mount Road, Chennai - 600002.Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records and quash the order dated 30.01.2018 in O.P.No.MSEFC/CR/61/2017.

For Petitioner : Mr.Vaibhav R Venkatesh

For Respondents : No Appearance for R1
Mr.R.Murali for R2

O R D E R

The petitioner has chosen to file the present writ petition challenging the order passed by the first respondent-Council dated 30.01.2018.

2. The present writ petition is filed under the following facts and circumstances:

The second respondent supplied certain crane operation services to the petitioner and out of such transaction, the second respondent claimed that a sum of Rs.16,97,111/- with compounded interest is liable to be paid by the petitioner towards the sale of such crane operation services. Since the said amount was not paid by the petitioner, the second respondent approached the first respondent-Council, which in turn passed the present impugned order, directing

the petitioner to pay the Principal amount of Rs.16,97,111/- with interest.

3. The learned counsel appearing for the petitioner contended that the writ petition is maintainable against the impugned order, since the same was passed without resorting to conciliation proceedings and also without giving sufficient opportunity of hearing to the petitioner. Therefore, he contended that resorting to remedy available under Section 19 of the Micro, Small & Medium Enterprises Development Act, 2006 does not arise in this case.

4. On the other hand, the learned counsel appearing for the second respondent submitted that the first respondent-Council has given sufficient opportunity to the petitioner to appear and put forth their case and however, such opportunity was not utilized by the petitioner. Therefore, he contended that the question of violation of principles of natural justice does not arise in this case. He further contended that the petitioner has in fact deducted TDS amount for the amount claimed by the second respondent and therefore, not paying the Principal amount after deducting such TDS, is to be construed as an admitted liability and consequently, the first respondent-Council has rightly passed an impugned order, against which, the petitioner has to work out their remedy only by filing application under Section 19 of the said Act.

5. The learned counsel for the petitioner relied on the decision made by the learned Single Judge of this Court in W.P.Nos.18282 to 18287 of 2015 dated 24.11.2015, reported in 2016(1)CTC403 to contend that the order impugned in this writ petition, being a non-speaking one, is liable to be set aside.

6. Heard both sides.

7. It is seen that the second respondent approached the first respondent under Section 18 of the Micro, Small & Medium Enterprises Development Act, 2006, by way of reference for the decision of the first respondent-Council, by making the claim of Rs.16,97,111/- with interest against the petitioner. The first respondent passed the order on 30.01.2018 on the reference made by the second respondent as stated supra. As against the order of the first respondent, a statutory remedy of filing an application to set aside the award/order is available to the petitioner under Section 19 of the said Act. However, the petitioner wants to sustain the present writ petition by contending that the same was passed without giving sufficient opportunity to the petitioner and also as a non-speaking one. It is also contended that before passing the award, the first respondent ought to have resorted to conciliation proceedings.

8. I am unable to agree with the above contentions raised by the petitioner for maintaining the writ petition, going by the facts and circumstances as found in the impugned order itself.

9. It is seen that the first respondent-Council has adjourned the matter thrice for the presence of the petitioner and however, on all the three occasions, the petitioner did not appear, despite receipt of summons. Therefore, it cannot be said that the impugned order was passed in violation of principles of natural justice. Consequently, the petitioner, having absented themselves before the first respondent-Council, despite receipt of summons, is not entitled to claim that the first respondent-Council ought to have resorted to the conciliation proceedings first. In all fairness, the petitioner, having received the summons, ought to have appeared before the first respondent-Council and placed all their submissions/objections. If they have chosen not to appear and place any objections/submissions, they cannot expect the first respondent-Council to refer the matter for conciliation automatically, despite the fact that the petitioner failed to appear and place their objections, despite receipt of the summons. Therefore, I reject the above contention of the petitioner that the conciliation proceedings should have taken place first.

10. The last submission is that the impugned order is a non-speaking one. Admittedly, the petitioner as the respondent before the first respondent-Council has not placed any contra pleadings. Therefore, the first respondent-Council is left with no other option except to accept the case of the second respondent as the petitioner before the Council and pass the orders.

11. Perusal of the impugned order shows that the first respondent-Council has stated the facts and figures, which have led to the filing of the reference under Section 18 of the said Act. Therefore, going by those facts and figures and in the absence of any contra pleadings or evidence, the first respondent has passed the impugned order, which cannot be faulted as such, that too, by saying as a non-speaking one. If an order is passed going by the available pleadings and claim and in the absence of any contra pleadings, it cannot be said as a non speaking one. If the petitioner is having any materials to challenge the said order on merits, it is open to them to file an application under Section 19 before appropriate forum to set aside the award, which they have not done so.

12. The learned counsel for the petitioner heavily relied on the above decision of the learned Single Judge made in Ramesh Conductors' case. Perusal of the facts and circumstances of that case would show that the respondent before the Council therein entered appearance and sought for conciliation and that the same was refused. Therefore, I find that the facts and circumstances of the present case are totally different and distinguishable with that of the Ramesh Conductors' case. Thus, I find that the above decision, based on facts and circumstances of the present case, cannot be applied.

13. Thus, I find that the present writ petition is not maintainable as against the order passed by the first respondent-Council under Section 18 of the said Act. Consequently, without expressing any view on the merits of the claim made by the respective parties, this writ petition is dismissed as not maintainable, however, by granting liberty to the petitioner to work out their remedy by way of filing application under Section 19, as stated supra. No costs. The connected miscellaneous petitions are closed.

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ASSISTANT REGISTRAR

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SUB-ASSISTANT REGISTRAR

sni/vri

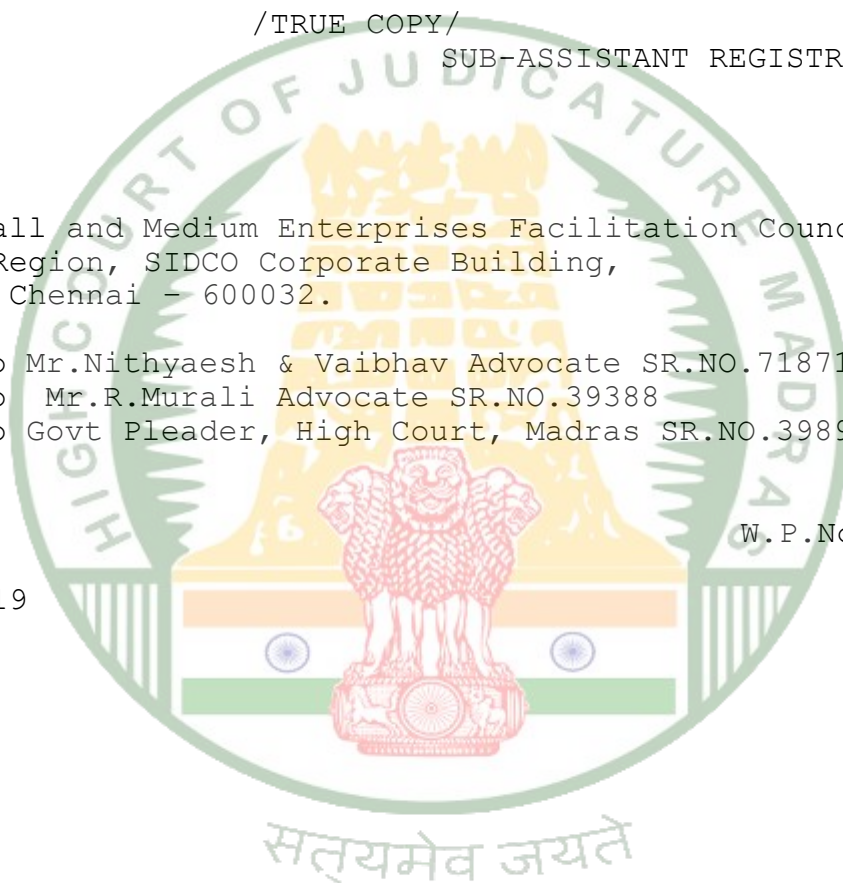
To

1. Micro Small and Medium Enterprises Facilitation Council,
Chennai Region, SIDCO Corporate Building,
Guindy, Chennai - 600032.

+1CC to Mr.Nithyaesh & Vaibhav Advocate SR.NO.71871
+1CC to Mr.R.Murali Advocate SR.NO.39388
+1CC to Govt Pleader, High Court, Madras SR.NO.39896

W.P.No.23252 of 2018

MK:12/06/2019



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