

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.NO.17809 OF 2019
& W.M.P.NO.17210 OF 2019

The Dean,
Government Dharmapuri,
Medical College Hospital,
Dharmapuri - 636 701.

... Petitioner

/versus/

1. M/s.Hindusthan Surgicals,
No.4/485, Railway Station Road,
Government Dharmapuri Medical College Hospital Back,
Dharmapuri.

2. The Chairman,
Micro & Small Enterprises Facilitation Council,
& Additional Chief Secretary/Industries,
Commissioner and Director of Industries and Commerce,
Chennai. ... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the records of 2nd respondent in passing the order dated 14.07.2016 in case No.M&SEFC/CBER/36/2016 in reference, quash the same and pass orders.

For Petitioner : Mr.V.Kathirvelu, Spl.Govt.Pleader

For R1 : Mr.P.Valliappan

For R2 : No appearance

O R D E R

The writ petitioner is the Dean of the Government Dharmapuri, Medical College Hospital, Dharmapuri. The first respondent has supplied nitrous oxide and medical oxygen gases filled in cylinders to the petitioner college, pursuant to the contract, entered with the Government of Tamil Nadu on 29.03.2012.

2. During the course of transaction, nitrous oxide and medical oxygen gases filled in cylinders were supplied by the first respondent for which, the petitioner owes a balance of Rs.82,04,493/-. A reference was preferred by the first respondent before the Regional Micro and Small Enterprises Facilitation Council, Coimbatore (hereinafter referred to as "the Council") under the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the MSMED Act, 2006).

3. During the conciliation proceedings before the Council, the petitioner paid substantial amount towards the claim. On 04.06.2016, the Council directed the petitioner to balance sum of Rs.41,99,874/- on or before 30.06.2016. The petitioner failed to pay the money before the due date. The Council recording the failure of conciliation, passed the following order :-

"The Council direct that the petitioner (M/s.Hindusthan Surgicals) is entitled to recover the principal amount of Rs.41,99,874/- (Rupees Forty one lakh ninety nine thousand eight hundred and seventy four only) with compound interest for pending bills with appointed due date of 45 days from invoice date., i.e., due date commencing from 2013-2014 and 2014-2015.

Therefore, the respondent (The Dean, Government Dharmapuri, Medical College Hospital) shall be liable to pay the principal sum of Rs.41,99,874/- (Rupees Forty one lakh ninety nine thousand eight hundred and seventy four only) together with compounded interest with monthly rest, at three time of the Bank rate notified by the Reserve Bank of India as stipulated in MSMED Act, 2006 from the appointed due dates respectively as above to the petitioner (M/s.Hindusthan Surgicals), till the date of settlement."

4. Subsequent to this order, the petitioner has settled the entire dues on 23.04.2018. However, the first respondent has preferred Execution Petition before the learned Principal District and Sessions Judge, Dharmapuri in REP.No.12 of 2017. Alleging that the proceedings of the Council dated 14.07.2016, is arbitrary and in violation of natural justice principle, the present writ petition is filed by the petitioner.

5. It is contended by the petitioner that the Council has

passed the order without jurisdiction which amounts to abuse of power. The procedure adopted by the Council for passing the order is improper and contra to the judgments laid down by the Courts, in this regard. The Council should not have entertain the dispute and adjudicated the matter and furthermore, compound interest ought not to have been slapped on the petitioner for the delayed payment. According to the petitioner, the mandatory requirement as per Sections 65 and 81 of the Arbitration and Conciliation Act and Section 18(2) of the MSMED Act, 2006, not followed by the Council.

6. On 30.07.2019, after considering the averments made in the petition; taking into consideration the welfare of the general public; taking into consideration the apprehension expressed by the learned Special Government Pleader that, pursuant to the Execution Petition filed by the first respondent, the movable properties in the Government hospital are likely to be attached, this Court granted interim stay, on condition that the petitioner shall deposit a sum of Rs.20,00,000/- (Rupees twenty lakhs only) in the account of REP No.12 of 2017 on the file of the learned Principal District Judge, Dharmapuri, within a period of four weeks from that day. In the subsequent hearing, it was reported by the learned counsel for the first respondent that the petitioner has not complied the conditional order and the same is also admitted by the learned Special Government Pleader appearing for the petitioner.

7. As far as the merit of the case is concerned, the Council is entitled to look into the grievance of the Micro, Small and Medium Enterprises, when there is breach of payment. The petitioner herein admits that there was delay in payment and admitted liability towards the first respondent, in respect of supply of nitrous oxide and medical oxygen gases filled in cylinders. While so, relying upon Sections 15 & 16 of the MSMED Act, 2006, the Council has initially conciliated the matter between the parties and later, had adjudicated to the effect that the petitioner is liable to pay a sum of Rs.41,99,874/- together with compounded interest with monthly rest as stipulated in the MSMED Act, 2006. This proceeding was passed on 22.10.2015.

8. The petitioner has chosen to challenge this award after lapse of more than three years and after the first respondent filed Execution Petition in the year 2017. This Court on perusal of the affidavit filed by the petitioner, find that the petitioner after enjoying the supplies made by the first respondent, has not bothered to pay the money. Even after initiating the proceeding before the Council, only part of the due was paid in piecemeal.

9. In such circumstances, the Council has gone into the merit

of the dispute and has passed order on 14.07.2016 which is impugned in this writ petition, belatedly. The writ petition suffers laches besides lack of merit. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm/jbm

To,

1. The Dean,
Government Dharmapuri,
Medical College Hospital,
Dharmapuri - 636 701.
2. The Chairman,
Micro & Small Enterprises Facilitation Council,
& Additional Chief Secretary/Industries,
Commissioner and Director of Industries and Commerce,
Chennai-32.

+1cc to Mr.P.Valliappan, Advocate, S.R.No.77270

W.P.No.17809 of 2019

SS(CO)
CS/10/10/2019