BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :01.10.2019

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.10002 of 2019
and
W.M.P.(MD).Nos.7792 and 13022 of 2019

The Commissioner,
Usilampatti Municipality,
Usilampatti,
Madurai District,
Tamil Nadu. : Petitioner

Vs.

1.The Chairman,
Micro & Small Enterprises Facilitation
Council of Haryana,
Office of Director of Industries and Commerce,
Haryana, 30 days building,
1st Floor,Section 17
Chandigarh.

2.M/s.Alfa Therm Limited,
6, Community Centre,
Mayapuri,
Phase-I,
New Delhi. : Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice along with the Claim Application No.954 of 2019, on the file of the first respondent and quash the same as illegal and arbitrary and consequently, direct the second respondent to file only in the concerned jurisdiction.

For Petitioner : Mr.K.Mahendran

For Respondent No.1 : Mr.K.Ashok Kumar Ram

For Respondent No.2 : Mrs.Porkodikarnan

O R D E R

The petitioner has come forward with the present Writ Petition, challenging impugned notice along with the Claim Application No.954 of 2019, on the file of the first respondent and quash the same as illegal and arbitrary and consequently, direct the second respondent to file only in the concerned Jurisdiction.

2. The petitioner is a Municipality. For the purpose of complying with the Municipal Solid Waste (Management and Handling) Rules, 2006, all the Municipal Authorities are required to collect their solid waste, transport, later process and dispose of the same. The petitioner floated a tender during the year 2015-16 for supply, delivery and erection of pre-processing unit and refinement unit. The second respondent, who is an entrepreneur, registered under the Micro Small and Medium Enterprises Development Act, 2006 (herein after referred as "MSMED Act"), has submitted a bid. After technical and financial evaluation, the second respondent was selected for supply of solid waste management machinery and for erection of pre-processing unit and refinement unit in Usilampatti, at the petitioner's compost yard. Pursuant to the letter of acceptance, a contract agreement was signed between the petitioner Municipality and the second respondent on 26.02.2016. As per the agreement, the second respondent dispatched the materials for a sum of Rs.84,19,649/- to the petitioner and demanded payment vide letter bearing No.ATL/MSW/2016/RL/187, dated 06.10.2016 for the work order regarding supply, delivery and erection of machineries for 30-MT PD Solid Waste Pre-Processing Unit, Refinement Unit at Usilampatti. The petitioner made partial payment of Rs.25,47,000/- leaving the balance of Rs.64,23,000/-. In this regard, the second respondent made another reminder dated 27.10.2016. After that, by letter dated 09.01.2018, the petitioner has addressed the second respondent to shift the machineries from the old compost yard to the new compost yard site at U.Vadipatti. Followed by reminders dated 18.04.2018 and 06.09.2018, the petitioner called upon the second respondent and also expressed their inability to release the money, as 100% materials were not supplied and that erection of machinery was also not taken place in full shape.

3. The second respondent, vide his letter dated 03.02.2017, addressed the petitioner that they would take care of the petitioner's supplied material and hand over the same to the petitioner in working condition, when the equipment shed is ready. Thereafter, he filed a complaint before the Chairman, Micro and Small Enterprises Facilitation Council, Haryana at Chandigarh. The Facilitation Council issued a notice to the petitioner, which

is under challenge before this Court.

4. The second respondent, by his letter dated 14.09.2018, informed that erection can be completed only upon release of payment of Rs.64.23 Lakhs, since the petitioner has replied the second respondent that 100% materials were not supplied by them and thus, the petitioner has released a sum of Rs.28.30 lakhs to the second respondent.

5. According to the petitioner, notice issued by the first respondent/ Facilitation Council is not valid for non-compliance of the terms and conditions of the tender documents, territorial jurisdiction and non-application of MSMED Act and also due to lack of cause of action.

6. The second respondent controverted the averments made by the petitioner, on the ground that as per clause 9 of the conditions of contract of the agreement, the writ petitioner shall make payment of 80% of the contract value on receipt of material at site and 20% of the contract value on erection and commissioning at site. So far, the petitioner failed to pay the due to the tune of Rs.89,70,000/-, which is more than 80% of the entire contract value. Being an entrepreneur governed by MSMED Act, reference made to the Facilitation Council is maintainable for failure to make the payment, for the supply made. 80% of Rs.89,70,000/- comes to Rs.71,76,000/-. In that, the petitioner paid a sum of Rs.25,47,000/- and failed to pay the balance amount of Rs.46,29,000/- or the claim made by the second respondent is valid. As per Section 18(4) of the MSMED Act, notwithstanding anything contained in law, for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. In that view of the matter, MSMED Act will prevail the Arbitration and Conciliation Act, 1996 and that they can lay the claim petition at the place of their jurisdiction and the Writ Petition is liable to be dismissed.

7. The learned counsel appearing for the second respondent would rely on the judgment of this Court reported in **2017 (5) CTC 18 i**n **Ved Prakash, Karmic Energy Private Limited Vs. S.Ponram Unicorn Engineers**, wherein, it has been held as follows:-

> **"7:Having seen the object of the Act, the necessity to preserve the Micro, Small and Medium Scale Industries, the method of protecting the interest of Investor, the composition of Council and the nature of jurisdiction to be exercised by the Council, the next to be considered is, when the**

Arbitration and Conciliation Act, 1996, is a Special enactment, which is Special to the mode of resolution of dispute, giving preference to party autonomy and when the MSMED Act is Special Act, providing special mode of dispute resolution through specially qualified persons providing specific mode of enforcing payment, which method is preferable.

....
....

8.1:Thus, it is clear that, out of two enactments, the provisions of the MSMED Act would prevail especially when it has a overriding provision under Section 24 where it has been clearly said that Sections 15 to 23 shall have the overriding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore, the contention that the Award passed by the Council is patently illegal, has to be rejected and it is rejected accordingly."

8. The learned counsel would also rely on a judgment of **High Court of Punjab and Haryana at Chandigarh in CWP.No.18828 of 2015, dated 10.09.2015** in a case between ***M/s.Fleetguard Filters Private Limited Vs Director of Industries, Chandigarh Administration and others***, wherein, it is held in Paragraph No.5 as follows:

" Thus, a perusal of the above would go on to show that under sub-section (4), the Council would have jurisdiction as there is a specific averment made by the private respondent that it has an office in Chandigarh. The argument that no supplies had been made in Chandigarh is without any basis since the jurisdiction clause does not talk about any cause of action on account of a business dealing having occurred in Chandigarh but gives a wider jurisdiction to a supplier who is located where the Council has jurisdiction. Reference to the clause of jurisdiction of Pune Courts would accordingly be without any basis since the Statute extends the jurisdiction to the Council to the place where the supplier has its office and, therefore, no fault can be found as such to the order passed by the Council. Keeping in view the above discussion, there is no scope for interference in the well reasoned order passed by the Council and the present writ petition is dismissed."

9. I have given my anxious consideration to the issues raised before this Court.

10. It is not in dispute that the second respondent is an

entrepreneur registered under Section 7(1) of MSMED Act and the provisions of the Act will override the other statutes in the matter of recovery of dues to the supplier. But, what is crucial is that the contract between the parties is for supply, delivery and erection of pre-processing unit and refinement unit. An agreement was entered between the parties on 26.02.2016. As per clause 12 of the agreement, the Court jurisdiction is only in Chennai. Section 15 of MSMED Act makes a buyer liable to make payment on completion of goods supplied or service rendered, within a period of forty-five days from the day of acceptance or the day of deemed acceptance.

11. In the instant case, the project itself is for supply, delivery and erection of pre-processing unit and refinement unit. There are disputes between the petitioner and the second respondent in respect of quantum of supply, delivery and erection of the unit. Section 15 mandates that the buyer, on completion of supply, shall make payment on or before the date agreed between them. From the peculiar circumstances of the present contract, it could be seen that it is not mere supply of goods, but also coupled with service to be rendered by a supplier. Admittedly, communications reveal that only 80% of supply of goods were made and service was not completed by the supplier. The supplier insists that as per the contract, they are entitled to payment of money on supply of 80% of the materials and 20% on completion of erection of the unit. The very same agreement specifies the jurisdiction of Courts at Chennai. If that being so, Council which is within the jurisdiction of Chennai only will have power to issue notice. The judgment in ***Fleetguard Filters Private Limited (supra)*** dealt with a situation where the supplier was situated at Haryana. It is true to state that Section 18(4) overrides the all other laws and confers jurisdiction to the Facilitation Council where the supplier is located. In that case, the supplier was located in Haryana within its jurisdiction. But, in the instant case, it could be seen from the agreement and invoices that the registered office at New Delhi and the Factory at Haryana. The contract entered between the parties and other communications disclose the place of business of the second respondent only at New Delhi. In that view of the matter, the second respondent, having entered into a contract within the State of Tamil Nadu and having registered office at New Delhi, can make reference to the appropriate Micro and Small Enterprises Facilitation Council within these two places. It cannot be at every place, where it has a factory or branch office. Then it will amount to forum shopping. The object of the Act is to promote the Micro, Small and Medium Entrepreneurs. The non obstante clause has been incorporated for the purpose of avoiding delay, to expedite the payment process and to protect the entrepreneurs from protracted litigations and from financial crisis. But it will not entail the supplier to abuse the

process, and pressurise the buyer to budge to illegal and exorbitant demands and to run to places of supplier's choice.

12. There shall be limitations for the Council to exercise jurisdiction. The word **'location under Section 18(4) of the Act'** means that the place from where the supplier runs his business or in other words, where he has the registered office or Head Office. It is made with an object to facilitate the entrepreneurs to have easy access to justice and hassle free recovery. In the instant case, as observed above, the registered office of the second respondent is at New Delhi and the contract and correspondences have taken place only from New Delhi. Therefore, it shall be construed that the supplier is located at New Delhi. Therefore, the first respondent Council does not have jurisdiction to entertain the reference and it is abuse of process of law. The judgment relied on by the second respondent is not applicable to the case on hand, as the facts and circumstances of this case are entirely different.

13. Secondly, the contract is a composite contract for supply of goods and for rendering service in erecting pre-processing and refinement unit. The second respondent cannot segregate the same and insist for payment only for supply of materials leaving out the incomplete services rendered. Therefore also, I consider that the claim of the second respondent is not in consonance with Section 15 making the petitioner/buyer liable for payment of amount and the reference is premature and abuse of process. However, this issue can be decided only through conciliation or arbitration or through any other alternative dispute resolution methods. Be that as it may, for inviting parties to conciliation, the Facilitation Council shall have jurisdiction. In the instant case, I have already held that Micro and Small Enterprises Facilitation Council at Haryana has no territorial jurisdiction to issue the impugned notice. Therefore, the impugned notice issued by the first respondent is liable to be set aside and accordingly, it is set aside.

14. In the result, the Writ Petition is allowed and consequently, the second respondent is directed to move before the Jurisdictional Council. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

vs/SML

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-90843[F] dated 01/10/2019)

+1 CC to M/s.K.ASOK KUMAR RAM, Advocate (SR-91301[F] dated 04/10/2019)

Order made in

W.P.(MD)No.10002 of 2019
Dated: **01.10.2019**

MA(CO)
TR(19.10.2020) 7P 3C