

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2020

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.NO.13502 OF 2013

AND

M.P. NO.1 OF 2013

(HEARD THROUGH VC)

M/s.Romantic Garments,
Represented by its Proprietor
Thiru.D.Venkatesan
1st Street, 9-11, Stanes Road
Tirupur - 641 602

.... Petitioner

Vs

1. P.Vellaichamy
Partner
M/s.Sony Tex Print
SF No.200/7, Sama Thottam
Karaipudur Village, Kunnangalpalayam
Veerapandi Post, Tirupur - 641 605
2. R.Thineshkumar
Partner
M/s.Sony Tex Print
SF No.200/7, Sama Thottam
Karaipudur Village, Kunnangalpalayam
Veerapandi Post, Tirupur - 641 605
3. The Chairman
Micro and Small Enterprises Facilitation Council
Coimbatore Region
Industries Commissioner and Director of Industries
and Commerce
Chepauk, Chennai 600 028
4. The Zonal Officer
Micro and Small Enterprises Facilitation Council
Coimbatore Region/General Manager
District Industries Centre
Coimbatore - 1.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records pertaining to the proceedings of the 3rd respondent to conduct fresh enquiry and pass appropriate orders by observing the principles of natural justice and in accordance with law by giving reasonable opportunity to the petitioner to file his proof affidavit, other relevant documents as claimed in petitioner's reply dated 5.12.2012 on the file of the 4th respondent.

For Petitioner : Mr.R.Selvakumar

For Respondents : Mr.T.Gowthaman
for R1 & R2

O R D E R

The petitioner has sought for a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the proceedings of the 3rd respondent to conduct fresh enquiry and pass appropriate orders by observing the principles of natural justice and in accordance with law by giving a reasonable opportunity to the petitioner to file his proof affidavit, other relevant documents, as claimed in petitioner's reply dated 5.12.2012 on the file of the 4th respondent.

2. The petitioner concern is engaged in printing job work on the garments to be exported to various countries. Respondents 1 and 2, who are the partners of M/s.Sony Tex Print, had approached the petitioner for the job work. A job order was placed on the respondents 1 and 2 with a condition to fulfil the quality of standard of global export level and also the time schedule of delivery. So on the above conditions, various orders have been placed. Due to the quality issue, the petitioner had not agreed for the payment for the invoices raised by the respondents 1 and 2 from 19.11.2011 to 07.04.2012. But, it is stated by the petitioner that the respondents 1 and 2 had presented the cheque given by the petitioner as security and the same was dishonoured for the reasons 'funds insufficient'. But the respondents 1 and 2 had not chosen to issue any notice against the same and proceeded legally.

3. While the dispute of the quality was yet to be resolved, the respondents 1 and 2, had approached the respondents 3 and 4, who are the statutory authorities under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as MSMED Act). The case was taken up on file and summons was issued to the petitioner and a counter was also filed. Based on

the complaint and the response, the respondents 3 and 4, had passed the impugned order.

4. Though Section 19 of the MSMED Act provides for an appeal, since the proviso contains a clause that the appellant has to deposit 75% of the award amount, the petitioner has moved this court under Article 226 of the Constitution of India on the ground that there is violation of principles of natural justice. In fact, that is the only ground raised by the petitioner.

5. The writ petition is resisted by the respondents 1 and 2 on the ground of maintainability of the writ petition against any award passed by the MSME Council, as an appeal remedy is provided under Section 19 of the MSMED Act. The condition precedent for filing an appeal by depositing 75% of the award amount, cannot be the reason for the petitioner to file a writ petition before this court and hence sought for dismissal of the same.

6. Heard both sides and perused the materials available on record.

7. The only question that has to be decided in this writ petition is, whether the writ petition is maintainable in view of the alternative remedy that is available under Section 19 of the MSMED Act?

8. A perusal of the impugned award would go to show that a claim has been laid by the respondents 1 and 2 herein against the writ petitioner for a payment of Rs.4,25,372/- relating to 11 bills. The case was registered as M&SEFC/CBER/24/2013. On 09.07.2012, a letter in this connection along with the enclosures, was sent to the petitioner herein by the MSE Facilitation Council, Coimbatore Region. A meeting was held on 23.07.2012, wherein the HR Manager representing the writ petitioner and the respondents 1 and 2 were present. He had also admitted the liability and sought for adjournments to settle the dues. Accordingly it was adjourned. The next meeting was held on 22.10.2012, where respondents 1 and 2 herein were absent and the writ petitioner was present and he was represented by its Manager (Legal) Mr.R.Sriram. He had also assured that the matter will be resolved amicably, however, he also filed a counter to the claim of the respondents 1 and 2 herein.

9. Again on 01.11.2012, the respondents 1 and 2 herein were present and the writ petitioner did not turn up in person. However it was mentioned that the Manager (Legal) of the writ petitioner assured to have one more discussion on 19.11.2012. From 19.11.2012 it was adjourned to 27.11.2012. On 27.11.2012, once again the writ petitioner has sought for an adjournment.

Hence it was adjourned to 30.01.2013. On 30.01.2013, the Manager (Legal) of the writ petitioner as well as the respondents were present and made their arguments and the matter was reserved for passing orders. The Council also after considering the facts and merits of the case, had passed an award directing the writ petitioner to pay a sum of Rs.4,25,372/- with compound interest at monthly rests till the date of settlement. The said impugned order is now being challenged by the petitioner on the ground that the petitioner was not afforded an opportunity of being heard personally, which is in violation of the principles of natural justice.

10. In support of his contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in Harbanslal Sahnia & Another vs. Indian Oil Corporation Ltd. & Others reported in 2003 (2) SCC 107. In the said judgment, the Hon'ble Supreme Court, at paragraph 7, held as follows:

"7... In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged. [See Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others (1998) 8 SCC 1]."

11. In yet another decision in Maharashtra Chess Association vs. Union of India & Others reported in CDJ 2019 SC 857, the Hon'ble Supreme Court, at paragraph 22 held as follows:

"....As discussed above, the writ jurisdiction of the High Court is fundamentally discretionary. Even the existence of an alternate adequate remedy is merely an additional factor to be taken into consideration by the High Court in deciding whether or not to exercise its writ jurisdiction...."

12. Per contra, the learned counsel appearing for the respondents 1 and 2, would place his reliance on a judgment of the Division Bench of this court in M/s.Eden Exports Company, Rep. by its Parnter vs. Union of India, Rep. by its Secretary, New Delhi & Others reported in 2013 WLR 1 and at paragraph 26, the Division Bench held as follows:

" 26. Apart from the reason stated above, these writ petitions were filed without complying with the provisions contained in Section 19 of the MSMED Act, 2006, which contemplates pre-deposit of 75% of the decree amount. The petitioners cannot overtake Section 19 and invoke Article 226 of the Constitution of India before this court. As we have held that pre-deposit of 75% is mandatory, we see no reason to entertain the present writ petitions. Moreover, once the petitioners have submitted themselves to the jurisdiction of the Council and when the decision of the Council went against them, they cannot turn around and state is against the provisions of law. As rightly pointed out by the learned single Judge, it is always open to the petitioners to move the appropriate civil court for relief or to invoke arbitration clause, if provided in the agreement. Hence, we are not inclined to entertain the present writ petitions filed challenging various awards/orders passed by the Facilitation Council and they are liable to be dismissed.

13. Learned counsel for the respondents 1 and 2 would further submit that, as recorded by MSME Council itself, the petitioner was given ample opportunities, adjournments enabling him to be personally present and also make his submissions. Merely because in the reply affidavit, the petitioner had stated that he wanted to file a proof affidavit along with written arguments, which he did not file even for at least two months before the order was passed on 30.01.2013. Therefore, the petitioner cannot take advantage of his own wrong and blame the Act, which prescribes pre-deposit of 75% at the time of filing the appeal. There is no rule of natural justice that on every stage a person is entitled to a personal hearing. The rule of natural justice also vary with different statutory bodies and the rules prescribed by the Legislature under which they have to act and the question where they have been contravened, must be judged not by any pre-conceived notion but in the light of the provision of the relevant Act.

14. Section 19 of the MSMED Act, specifically provides for pre-deposit of 75% of the amount in terms of the decree or award or order in the manner as directed by such court. It is not even the case of the petitioner that he has made an application to the Council to consider his case from making payment of 75% of the money, as contemplated in Section 19 of the Act.

15. The principles of 'natural justice' are meant only to prevent miscarriage of justice and afford an opportunity to the respondent. In the case on hand, the petitioner was given sufficient opportunities and each time, either the petitioner or his representative, was present and had been purchasing time for the settlement of the amount. Therefore, it would not lie in the mouth of the petitioner to say that he can invoke Article 226 of the Constitution of India, on the ground of violation of principles of natural justice. As admittedly, there is an alternative remedy available to the petitioner, under Section 19 of the MSMED Act, the writ petition is not maintainable, either on the question of maintainability or on the merits of the case, hence the writ petition is liable to be dismissed.

16. Accordingly, the writ petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Asr

To

1. The Chairman
Micro and Small Enterprises Facilitation Council
Coimbatore Region
Industries Commissioner and Director of Industries
and Commerce
Chepauk, Chennai 600 028
2. The Zonal Officer
Micro and Small Enterprises Facilitation Council
Coimbatore Region/General Manager
District Industries Centre
Coimbatore - 1.

+1cc to Mr.R.Selvakumar, Advocate, S.R.No.33350

W.P.No.13502 of 2013 and
M.P. No.1 of 2013

KJ(CO)
CS/02/11/2020