



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P(MD).Nos.14491, 14492, 14498 & 14505 of 2020

and W.M.P.(MD).Nos.12130, 12131, 12141 & 12155 of 2020

WEB COPY

P.Sumathi	.. Petitioner in W.P.(MD).No.14491 of 2020
N.Sudarsan	.. Petitioner in W.P.(MD).No.14492 of 2020
N.Murugesan	.. Petitioner in W.P.(MD).No.14498 of 2020
D.John Ravi	.. Petitioner in W.P.(MD).No.14505 of 2020

Vs.

1.The Micro Small Enterprises Facilitation
Council/District Industries Centre,
Madurai Region, Madurai - 625 002.

2.M/s.Krishna Jewel Creators,
represented by its Partner,
N.Sivakumar,
Office at 57, Gandhi Complex 1st Floor,
South Avani Moola Street,
Madurai - 625 001. .. Respondents in all petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India for issuance of Writ of Mandamus directing the 1st respondent to conduct the enquiry in O.P.Nos.9, 6, 11 & 10 of 2020, respectively, pending on the file of the 1st respondent under Section 18 of the Micro Small and Medium Enterprises Development Act, 2006.

For Petitioner	: Mr.N.Satheeshkumar
For Respondents	: Mr.M.Rajarajan
	Additional Government Pleader
	(In All petitions)

COMMON ORDER

These writ petitions have been filed seeking for a Mandamus to direct the first respondent to conduct the enquiry in O.P.Nos.9, 6, 11 & 10 of 2020, respectively, pending on the file of the 1st respondent under Section 18 of the Micro Small and Medium Enterprises Development Act, 2006.

2.Heard Mr.N.Satheeshkumar, learned counsel appearing for the petitioners in all petitions. Mr.M.Rajarajan, learned Additional Government Pleader, accepts notice on behalf of the first respondent in all petitions. Since the relief sought for by the petitioner is only against the first respondent, notice to the second respondent is dispensed with.



3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4. The only grievance of the petitioners is that the first respondent is not following the procedure as contemplated under Section 18 of the Micro Small and Medium Enterprises Development Act 2006 (herein after referred to as MSMED Act).

5. Section 18 of the MSMED Act reads as follows:

"18. Reference to Micro and Small Enterprises Facilitation Council.-(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other 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.

(5) Every reference made under this section shall



be decided within a period of ninety days from the date of making such a reference."

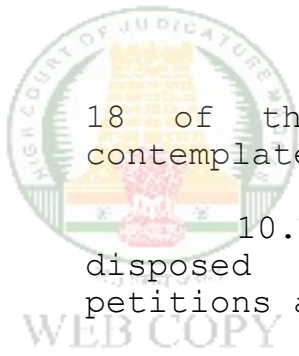
6.The learned counsel for the petitioners would submit that the first respondent has bypassed the procedure contemplated under Section 18(2) and 18(3) of the MSMED Act, while hearing a complaint filed by the second respondent against the petitioners for the alleged non payment of the dues to the second respondent by the petitioner. It is not in doubt that the first respondent will have to necessarily follow the procedure contemplated under Section 18 of the MSMED Act. Even in the normal circumstances, there is no necessity for this Court to entertain the relief sought for in these writ petitions. But, under the MSMED Act, as per Section 19, if the aggrieved party intends to challenge the award, he can do so only, if he deposits 75 % of the award amount.

7.Section 19 of the MSMED Act reads as follows:

"19. Application for setting aside decree, award or order.—No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court: Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."

8.In view of the stringent statutory condition, for preferring an application to set aside the award imposed, under Section 19 of the MSMED Act, the rights of a party to defend a complaint lodged by a supplier under the MSMED Act has to be adequately protected by Courts. Only in such circumstances, this Court is constrained to entertain these writ petitions and pass suitable directions with regard to the procedure to be followed, whenever a complaint has been lodged by a supplier against the buyer under the MSMED Act.

9.For the forgoing reasons, this Court directs the first respondent to conduct the enquiry in all the petitions namely O.P.Nos.9, 6, 11 & 10 of 2020, pending on his file, under Section



18 of the MSMED Act and in accordance with the procedure contemplated under Section 18 of the MSMED Act.

10. With the aforesaid direction, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Micro Small Enterprises Facilitation Council/District Industries Centre, Madurai Region, Madurai - 625 002.

+1 CC to M/s.GP (SR-20545 to 20547 and 20568[F] dated 19/10/2020)

+4 CC to M/s.N. SATHEESKUMAR, Advocate (SR-20609,20610,20611,20612 [F] dated 20/10/2020)

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14498 & 14505 of 2020
16.10.2020**

AP(29.10.2020) 4P 7C