



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2021

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.11348 of 2021

and W.M.P.Nos.11992 & 11994 of 2021

M/s. Bharat Sanchar Nigam Limited,
Rep. by its Chief General Manager,
Southern Telecom Projects,
No.25, BSNL Towers, Greenways Lane,
Raja Annamalaipuram,
Chennai - 600028.

... Petitioner

Vs.

1. Micro and Small Enterprises Facilitation Council,
Jaipur (Third),
Office of Commissioner of Industries,
Government of Rajasthan, Udyog Bhavan,
Tilak Marg, Jaipur,
Rajasthan - 302005.

2. M/s.Purma Plast Private Limited,
Rep. by Sri Raghuvveer Sharma,
B-494, RIICO Industrial Area, Phase I,
Bhiwadi, Alwar, Rajasthan.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the first respondent in Case No.RJ/02/S/RJS/00619, award dated 23.10.2019 and quash the same.

For Petitioner	:	Mr.T.R.Rajagopalan Senior Counsel for Mr.S.Gopinathan
For 1 st Respondent	:	Mr.John J.Raja Singh Special Government Pleader

ORDER

(Heard through Video Conferencing)

The Writ Petition is filed by the petitioner which is none other than the Government of India undertaking challenging the



award of the first respondent in arbitration proceedings between the petitioner and the second respondent herein. The award dated 23.10.2019 was passed against the petitioner herein by the Arbitral Tribunal, the first respondent herein. Number of grounds have been raised in the affidavit assailing the impugned award. However, very strangely, the very same award has been challenged by the petitioner before this Court in O.P.No.443/2020. The O.P. was dismissed by this Court vide Order dated 10.12.2020 on the ground of delay in challenging the award and as against the same O.S. Appeal No.101/2021 is preferred and the same is pending before a Division Bench of this Court. The petitioner notwithstanding the fact that O.S.A.No.101/2021 has been filed which has been admitted and pending before this Court, has come up with this writ petition challenging the same award contending that while passing the award, the first respondent has failed to follow certain mandatory procedure in the arbitration proceedings. Therefore, the petitioner was constrained to challenge the award for procedural violations in this writ petition.

2. Mr.T.R.Rajagopalan, learned senior counsel for Mr.S.Gopinathan, learned counsel appearing for the petitioner would submit that in view of the procedural violations which vitiated the entire arbitration proceedings, the petitioner is compelled to challenge the award only in writ jurisdiction notwithstanding the fact that regular O.P. has been filed challenging the award on merits. He would therefore, submit that the writ is maintainable, as the scope of adjudication of the writ is different from the scope of adjudication of Original Petition by this Court. The learned senior counsel has also contended as to the power and jurisdiction of the 1st respondent in undertaking arbitration.

3. This Court is unable to appreciate the arguments for the reason that when a regular challenge has been made in the pending original petition, it is always open to the petitioner to raise all contentions including jurisdictional issue and mandatory procedural violations in the said proceedings. When such opportunity is available to the petitioner, it is certainly not open to the petitioner to challenge the award before this Court and maintain this writ petition also under Article 226 of the Constitution of India.

4. This Court is unable to countenance the writ petition in the face of the fact that Original Petition has been filed against the very same impugned award before this Court and the subsequent O.S.A.101/2021 before the Division Bench of this Court. The reason set forth for maintaining this writ petition



is legally unacceptable and the in opinion of this Court does not merit serious consideration. When an award is put to challenge in Original Petition, it is always open to the party to raise objection including procedural infirmities and jurisdictional lacuna and maintaining two parallel proceedings one on merits and other one on procedural infirmities, is impermissible and such a dual course is certainly not open to the petitioner. Further, maintaining two proceedings ie., one under the constitutional law and another under arbitration law may likely to give rise to conflict of views, by Courts exercising different jurisdiction, undermining the concept of uniform dispensation of justice.

5. The petitioner is already before this Court in the pending O.S.A. and their right to get the award set aside, on the stated legal infirmities is not taken away at all. In such circumstances, the parallel challenges in the writ petition is unwarranted and uncalled for. On the whole, this Court is of the view that the reason for maintaining the writ petition stated by the petitioner in their affidavit, does not carry any conviction with this Court and therefore, the writ petition is liable to be rejected outright.

6. Accordingly, the Writ Petition stands dismissed at the admission stage itself. No costs. Connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

sni/pns

To

1. Micro and Small Enterprises Facilitation Council,
Jaipur (Third),
Office of Commissioner of Industries,
Government of Rajasthan, Udyog Bhavan,
Tilak Marg, Jaipur,
Rajasthan - 302005.

+1 CC to Mr.S.Gopinathan, Advocate sr 27568.

W.P.No.11348 of 2021

PMK (CO)

SP(16/07/2021)