



WEB COPY

W.P(MD)No.6051 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

W.P(MD) No.6051 of 2021

and

W.M.P(MD)Nos.4724 and 4725 of 2021

Madurai Kamaraj University,
Represented by its Registrar,
Palkalai Nagar,
Madurai - 625 021.

.. Petitioner

Vs

1.The Chairman,
Micro & Small Enterprises Facilitation Council,
(Industries Commissioner and Director of
Industries & Commerce, Chennai)
Coimbatore Region,
District Industries Centre,
Coimbatore - 641 001.

2.M/s.Set Infotect Pvt Ltd,
726, B II Floor, Sri Venkey Complex,
SND Layout,Tatabad,
Coimbatore - 641 012.

.. Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records relating to the summon dated 31.01.2021 and 02.03.2021 issued by the 1st respondent in "O.P.MSEFC/CBER/137/2020 and quash the same.

For Petitioner : Mr.T.Sakthikumaran

ORDER

The petitioner is Madurai Kamaraj University. The University entered into a memorandum of agreement on 28.02.2014 with the 2nd respondent company for creation of e-learning portal and development of digital content for Directorate of Distance Education. In pursuance of the memorandum of agreement entered into between the petitioner University and the 2nd respondent, the bills have been forwarded by the 2nd respondent for completion of the project stage wise from time to time and the same had also been settled by the University. In respect of certain components of project, there

<https://hcservices.ecourts.gov.in/hcservices/>



appears to be some dispute raised with reference to the claim by the 2nd respondent as against the University.

2. According to the University, certain details were sought in regard to the claim by the 2nd respondent in respect of e-book and maintenance, at this the 2nd respondent agreed to provide the details of persons assessed to the individual e-books, but failed to provide the details as undertaken by them.

3. While matters stood thus, it appears that the 2nd respondent has caused legal notice on 08.12.2020 alleging non-payment of bills to the tune of Rs.5,35,64,175/- and also non refund of EMD amount of Rs.15,00,000/- and the University has also sent a detailed reply to the legal notice on 18.01.2021.

4. The 2nd respondent in order to enforce its claim against the University has moved the 1st respondent Council for adjudication of the dispute in terms of the memorandum of agreement entered into between the parties on 28.02.2014, summon was issued by the 1st respondent Council on 31.01.2021 directing the University to respond to the claim raised by the 2nd respondent. Challenging the same the University is before this Court.

5. The learned Counsel appearing for the University has reiterated the above facts and attempted to convince this Court that the notice issued by the 1st respondent Council is invalid and not acceptable.

The learned Counsel has drawn the attention of this Court to certain factual aspects as to how the claim of the 2nd respondent is unsupported by materials and hence unsustainable. In fact, the learned Counsel would also attempt to draw the attention of this Court to certain provisions of the memorandum of agreement dated 28.02.2014 and would submit that the notice issued by the 1st respondent is to be interfered with on such appreciation.

6. This Court is unable to appreciate as to the filing of the writ petition at this stage by the University when the impugned notice dated 31.01.2021 issued by the 1st respondent merely requests the University to offer their remarks in response to the claim of the 2nd respondent.

7. The contents of the impugned notice are extracted hereunder to expose as to how the petitioner University has rushed to this Court needlessly and unnecessarily when the rights of the parties have not been prejudiced or infringed one way or the other.

"In the reference cited, the petitioner enterprise has filed a plea to the Regional Level MSEFC, Coimbatore Region to facilitate the realization of the pending payment of Rs.5,50,64,175/- due from your unit for the



goods/ service supplied by it.

The above letter of petitioner enterprise along with the enclosure records as received are annexed herewith for kind reference.

WEB COPY

Therefore, on receipt of this letter, you are requested to offer your remarks early on the above subject to the petitioner, with a copy to this council for deciding further course of action by the council."

8.Although several grounds are raised in the affidavit filed in support of the writ petition, this Court is unable to appreciate as to how the grounds raised by the petitioner therein would compel this Court to intervene at this stage of the matter. When the 2nd respondent has approached the 1st respondent Council for resolution of the dispute, it does not lie in the mouth of the University to oppose the very initiation of action calling for remarks from the University in regard to the claim of the 2nd respondent towards settlement of the *lis* between the parties.

9.By filing the present writ petition, the University is only attempting to convert the constitutional jurisdiction of this Court into a court of enquiry or arbitration for adjudication of the factual controversies as between the parties and also for adjudication of the relevant terms of contractual agreement as between the parties.

10.It is needless to mention that a dispute of this nature involving interpretation of the contractual terms and agreement between the parties and also adjudication of the opposing rival claims, a writ court is not a proper forum for settling the *lis* between the rival claimants. The enforcement of the mutual contractual obligation fall outside the scope of public law remedy, namely, the constitutional jurisdiction under Article 226 of the Constitution of India.

11.These are matters fall within the realm of private law and in any event, when the alternative mechanism has been created for settlement of the dispute through the 1st respondent Council, the University is better advised to respond to the notice and convince the Council that the claim of the 2nd respondent is not sustainable either on facts or in law. At the same time, it is not for the University to rush to this Court at this stage and invoke the extraordinary jurisdiction of this Court. In the opinion of this Court the present attempt by the petitioner University in invoking the writ jurisdiction of this Court amounted to barking up the wrong tree.



12.For the above stated reasons the writ petition stands dismissed as not maintainable. No costs. Consequently, connected miscellaneous petition is dismissed.

WEB COPY

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Chairman,
Micro & Small Enterprises Facilitation Council,
Industries Commissioner and Director of
Industries & Commerce, Chennai)
Coimbatore Region,
District Industries Centre,
Coimbatore - 641 001

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-12598[F] dated
19/03/2021)

W.P(MD) No.6051 of 2021
18.03.2021

AK(26/02/2021) 4P 3C