



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11544 of 2016

and

W.M.P. (MD)No.8824 of 2016

M/s. Madhucon Projects Ltd.,
Registered Office at Madhucon House,
Plot No.1129/A, Road,
No.36, Hi-Tech City Road,
Jubilee Hills,
Hyderabad - 500 033.

... Petitioner

Vs.

1.M&SE Facilitation Council (Micro & Small Enterprises),
Rep. by its Chairman, Madurai.

2.S.Prince Proprietor,
M/s.P.S.S.Vijaya & Co.,
Door No.97/G/4B, Palayamkottai Road (West),
Teachers Colony, Thoothukudi - 628 008
Rep. by its Authorised Representative,
A.Jutson Daniel

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order by the 1st respondent in Case No.O.P.02/MSEFC/2015-16, dated 06.01.2016 and quash the same as illegal.

For Petitioner : Mr.C.Sasikumar
For Respondents : Mr.N.Viswanathan for R2

No appearance for R1

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the second respondent.

2.The second respondent initiated proceedings against the writ petitioner under the provisions of Micro, Small and Medium Enterprises Development Act, 2006. The matter was taken up by the

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



first respondent Council. By the impugned order dated 06.01.2016, the first respondent directed the petitioner to pay a sum of Rs.34,50,000 to the second respondent herein. Questioning the same, this writ petition came to be filed.

3. When the matter was listed for admission on 28.06.2016, an interim order of stay was granted without any condition.

4. Today the writ petition is being taken up for final disposal. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned award.

5. Per contra, the learned counsel for the second respondent submitted that this Court had granted unconditional interim order of stay without taking note of the Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006. The said provision categorically states that unless the supplier deposits 50% of the amount in terms of the decree or award, the application for setting aside the award will not be done in terms. He would also point out that statute itself has provided remedy for setting aside the award passed by the facilitation council and that writ petition under Article 226 of the Constitution of India may not lie.

6. I carefully considered the rival contentions and went through the materials on record. The learned counsel for the second respondent drew my attention to the order passed by the Hon'ble Supreme Court in Civil Appeal Nos.7117 and 7118 of 2017 dated 10.07.2019 (M/s. Sterling Industries Vs. Jayprakash Associates Limited). In the said case, the High Court had entertained a writ petition under Article 227 of the Constitution of India against an order passed by the District Judge under Section 20 of the Arbitration and Conciliation Act, 1996 r/w. Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006. The application had been made by Jayprakash Association Limited against a partial award made under Section 16 of the Arbitration and Conciliation Act. The Hon'ble Supreme Court found fault with the High Court for having intervened in the matter. The earlier decision reported in (2005) 8 SCC 618 (SBP & Co Vs. Patel Engineering Limited & Anr.) was invoked. Paragraph 45 of the said decision reads as under:-

"45. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16



of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible."

7.I am therefore of the view that a writ petition against an award passed by the facilitation council under Micro, Small and Medium Enterprises Development Act, 2006 will not lie and the person against whom the award was passed will have to necessarily avail the remedies set out in the statute. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

The Chairman,

M&SE Facilitation Council(Micro& Small Enterprises), Madurai.

+1 CC to M/s.N.VISWANATHAN, Advocate (SR-13107[F]dated 23/03/2021)

+1 CC to M/s.C.SASI KUMAR, Advocate (SR-13178[F] dated 24/03/2021)

W.P(MD)No.11544 of 2016

22.03.2021

ias

AM/29/04/2021/3P/4C

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