

2 26.04.2022

gd/ssd

MAT/413/2022
IA NO: CAN/1/2022
M/S. ANKIT METAL AND POWER LIMITED
AND ANR.
VS
W.B. STATE MICRO SMALL ENTERPRISE
FACILITATION COUNCIL (WBSMSEFC) AND
ORS.

Mr. Ratnanko Banerjee,
Mr. Sudhasatya Banerjee,
Mr. Ratnesh Rai,
Mr. Ambar Rai,
Mr. Sachhida Nand Pandey

..for the Appellants.

Md. T.M. Siddiqui,
Mr. N. Chatterjee

..for the Respondent No.1 & 2.

Mr. Mohit Gupta,
Mr. A. Chakraborty

..for the Respondent No.7.

This appeal is directed against the order of the learned Single Judge dated 1st March, 2022 whereby WPA 3239 of 2020 raising a challenge to the award passed by W.B. State MSME Facilitation Council, has been dismissed.

The facts in nutshell are that on account of certain dispute in respect of non-payment as against the goods supplied by the respondent no.7, the conciliation proceedings under the Micro, Small and Medium Enterprises Development Act, 2006 (MSME) were initiated and in those proceedings both the parties

had participated and the conciliation proceedings had failed on 05.07.2018. Thereafter the arbitration proceedings had started in which the appellants had appeared on 28.03.2019 but had failed to appear on the subsequent date i.e. on 29.05.2019 which resulted into passing of an ex parte award by the MSME council, which was subject matter of challenge by the appellants before the learned Single Judge in a writ petition under Article 226 of the Constitution. The said petition has been dismissed.

Submission of learned counsel for the appellants is that the MSME council had clubbed the arbitration and conciliation proceedings, therefore, in view of the judgment of the Supreme Court in the matter of *Jharkhand Urja Vikas Nigam Limited v. State of Rajasthan and Others* reported in 2021 SCC Online SC 1257, the award cannot be sustained. He has further submitted that in terms of Section 23 of the Arbitration Act, the statement of claim was not submitted by the respondent no.7, therefore, there was no opportunity to the appellants to submit the written statement. He has further submitted that the provisions contained in Section 23 of the Arbitration Act are mandatory provisions. Hence, the award could not have been passed. He has also submitted that the MSME council could not have taken up the arbitration proceedings

and the independent arbitrator ought to have been appointed after failure of conciliation and therefore, learned Single Judge has committed an error in dismissing the petition.

Learned counsel for the respondent nos.1 and 2 i.e. MSME council has supported the award and has submitted that in terms of the provisions of the MSME Act, the council is competent to take up the conciliation proceedings and thereafter, on failure of the conciliation to take up the arbitration proceedings. He has further submitted that due notice of the second date was also given to the appellants and since the appellants did not appear, therefore, ex parte award was passed.

Learned counsel for the respondent no.7 has opposed the appeal and has submitted that the statement of claim was duly filed in the arbitration proceedings and, therefore, there was compliance of Section 23 of the Arbitration Act. He has further submitted that in terms of Section 24, MSME Act has overriding effect and that no error has been committed by the learned Single Judge in dismissing the petition.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that undisputedly against the award passed by the MSME council, the appellants has remedy under Section 34 of the Arbitration Act. In terms of Section 5 of the

Arbitration Act, the judicial intervention in the arbitral proceedings is required to be minimal and that once the Arbitration Act provides for remedy to challenge the award on the ground specified under Section 34 of the Act, then unless some exceptional case is made out, no interference in exercise of writ jurisdiction under Article 226 of the Constitution is required.

On perusal of the record in the present case, it is noticed that after failure of the conciliation proceedings on 05.07.2018, the MSME council had initiated the arbitration proceedings and due notice of the same was given to the appellants and in the arbitration proceedings, appellants had appeared on 28.03.2019. The respondent no.7 has produced before this Court the statement of fact dated 10.12.2018 which was submitted by him in the arbitral proceedings and the said document produced by the respondent nos.1 and 2 along with the affidavit also reveals that the statement of fact was duly served upon the appellants on 17.12.2018. The arbitral proceedings dated 28.03.2019 reveals that the appellants were granted opportunity to file the written statement when they were duly represented and at that time no such objection was raised about non-filing of statement of fact by the appellants. So far as the next date i.e. on 29.05.2019 is concerned admittedly appellants had come to know

about it two days prior to the said date yet they had not appeared, therefore, an ex parte award was passed by the MSME council.

Hence, in the aforesaid facts of the case, we are of the opinion that no exceptional circumstances exist for entertaining the writ petition against the impugned award.

So far as the judgment in the case of *Jharkhand Urja Vikas Nigam Limited* (supra) relied upon by the learned counsel for the appellants is concerned, in that case the MSME had started the conciliation proceedings on 06.08.2012 and on the very same day on failure of the conciliation proceedings an award was passed, therefore, the Hon'ble Supreme Court had expressed that the conciliation proceedings and arbitration proceedings cannot be clubbed up. But in the present case, the two proceedings have been separately taken up by the MSME council. Hence, we are of the opinion that the appellants are not entitled to the benefit of the judgment of the Supreme Court in the case of *Jharkhand Urja Vikas Nigam Limited*.

So far as the argument advanced by the learned counsel for the appellants that the MSME council cannot take up the arbitral proceedings and the independent arbitrator should have been appointed, Section 18(3) of the MSME Act is clear, which empowers

the counsel to take up the dispute for arbitration itself or to refer it to any other independent institution. Section 24 of the MSME Act gives overriding effect to the provisions of Sections 15 to 23 of the Act. Hence, such a submission cannot be accepted.

In these circumstances, we find that no error has been committed by the learned Single Judge in dismissing the petition. Hence, no ground is made out to allow this appeal, which is, accordingly, dismissed.

However, we make it clear that in case, if the appellants take recourse to the remedy under Section 34 of the Arbitration Act, then any observation made by this Court or by the learned Single Judge will not come in their way.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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