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W.P.No.16890 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2022

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THE HONOURABLE Mr.JUSTICE S.SOUNTHAR

W.P.No.16890 of 2016
and
W.M.P.No.14475 of 2016

Bagalkot Cement & Industries Ltd.,
Having its registered office at,
Stadium House, Block No.1,
6th Floor, Veer Nariman Road,
Churchgate, Mumbai – 400 020.

... Petitioner

Vs.

1. The Chairman,
Micro Small and Medium Enterprises Facilitation Council,
Additional Chief Secretary/Industries Commissioner &
Director of Industries & Commerce,
Chennai – 600 032.

2. P.Ponram
Respondents

...

Prayer : Writ Petition is filed under Article 226 of the Constitution of India,
pleaded to issue a writ of Certiorari, to call for the records of the first
respondent in Case No.M&SEFC/CBER/36/2016 and quash the impugned



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decision/order in the proceedings dated 01.03.2016.

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For Petitioner : Ms.J.N.Preethi
for M/s. King Partridge
For R1 : Ms.M.Jayanthi
Additional Government Pleader
For R2 : Mr.B.Manoharan

ORDER

The petitioner has come up with this Writ Petition challenging the order passed by the first respondent/ Micro Small and Medium Enterprises Facilitation Council dated 01.03.2006, directing the petitioner to pay a sum of Rs.24,89,419/- along with compounded interest as stipulated in the MSMED Act.

2. Learned counsel for the petitioner submitted that the petitioner was not served with any notice regarding the proceedings filed before the Council/R1 under Section 18 of the MSMED Act. According to the petitioner, as per the impugned order, the notice sent to the petitioner was returned with an endorsement “the party has left”. Since the impugned order was passed in violation of natural justice principles, the same is deserved to be set aside.



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3.Learned Counsel for the second respondent submitted that he was made to suffer for nearly six years and it will have an adverse impact on his financial position and requested the Court for referring the matter for mediation.

4. The reading of the impugned order make it clear that on receipt of reference from the second respondent, the first respondent issued notice to the petitioner and the same was returned with an endorsement “the party has left”. Therefore, it is clear that the proceedings before the first respondent was conducted without serving notice to the petitioner which is a clear violation of natural justice. Further, the reading of impugned order make it clear that the first respondent has not followed the step by step procedure contemplated under Section 18 of the MSMED Act. In this regard, the learned counsel for the petitioner relied on the order of this Court dated 24.06.2022 made in W.P.No.25759 of 2013, wherein the step by step procedure to be followed under Sections 18(1), 18(2) and 18(3) of MSMED Act has been explained.



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5. It is settled now that the first respondent after service of notice to all the parties and on receipt of their response, shall relegate the parties for conciliation and in case conciliation fails, the matter shall be referred to arbitration. The said procedure contemplated under Section 18 of the MSMED Act has not been followed by the first respondent, therefore, the impugned order passed by the first respondent cannot be treated as an award passed under Section 18 of the MSMED Act.

6. Therefore, the matter is remanded back to the file of the first respondent and the first respondent is directed to follow the step by step procedure contemplated under Section 18 of the MSMED Act and decide the matter afresh as expeditiously as possible, within the period as mandated by MSMED Act. The first respondent is directed to take up the matter for consideration on 01.08.2022. Both the petitioner and the second respondent are directed to appear before the first respondent on 01.08.2022 at 10.30 am.



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7. In view of the above, the impugned order is set aside and the

Writ Petition stands allowed. Consequently, the connected miscellaneous petition is closed.

11.07.2022

Note: Issue order copy on 15.07.2022

Index :Yes/No

Internet:Yes/No

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To

1. The Chairman,
Micro Small and Medium Enterprises Facilitation Council,
Additional Chief Secretary/Industries Commissioner &
Director of Industries & Commerce,
Chennai – 600 032.
2. The Public Prosecutor
High Court of Madras.



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S. SOUNTHAR, J.

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and
W.M.P.No.14475 of 2016**

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