



W.P.No.34079 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.34079 of 2015
and M.P.No.1 of 2015

Balaji Polycans
Represented by its
Proprietrix Mrs.K.Padmapriya
No.7 & 8th Cross Street,
Venkateswara Colony,
M.M.C. Post,
Chennai – 600 051.

...Petitioner

-Vs-

- 1.The Managing Director,
Tamil Nadu Medicinal Plant Farms and
Herbal Medicine Corporation (TAMPCOL) Ltd.,
Office at Anna Hospital Campus,
Arumbakkam, Chennai – 600 106.
- 2.The General Manager,
Tamil Nadu Medicinal Plant Farms and
Herbal Medicine Corporation (TAMPCOL) Ltd.,
having Office at Anna Hospital Campus,
Arumbakkam, Chennai – 600 106.
- 3.The National Small Industries Corporation Limited,
A Government of India Enterprises,
Represented by its Senior Branch Manager,
SIDCO AIEMA Tower,
No.309, Third Floor, First Main Road,



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Ambattur Industrial Estate,
Ambattur, Chennai – 600 058.

...Respondents

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Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents, particularly particularly the first and second respondent, to disburse the sum of Rs.13,26,000/- payable to the petitioner for supply of plastic containers effected by the petitioner pursuant to the confirmation of tender by the second respondent vide communication dated 18.06.2014, with interest for the delay in effecting the payment as per the provisions of The Micro, Small and Medium Enterprises Development Act (MSME) 2006 within a time limit that may be stipulated by this Court.

For Petitioner : Mr.B.K.Girish Neelakandan

For Respondent – 1 : M/s.Dakshayani Reddy

For Respondent – 3 : Mr.Ajoy Kumar Gnanam

ORDER

This writ petition is filed for issuance of a writ of mandamus directing the respondents, particularly the first and second respondent, to disburse a sum of Rs.13,26,000/- payable to the petitioner for supply of plastic containers effected by the petitioner pursuant to the confirmation of tender by the second respondent vide communication dated 18.06.2014, with interest for the delay in effecting the payment as per the provisions of the Micro, Small and Medium Enterprises



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Development Act (MSME) 2006.

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2. Heard Mr.B.K.Girish Neelakandan, learned counsel appeared for the petitioner; M/s.Dakshayani Reddy, learned counsel appeared for the first respondent; Mr.Ajoy Kumar Gnanam, learned counsel appearing for the third respondent.

3. Brief facts that are necessary for the disposal of this writ petition are as follows:

4. The petitioner is a proprietrix of a small scale industry known as Balaji Polycans engaged in manufacture of plastic cans/containers with caps and allied plastic products. Respondents 1 and 2 are Government of Tamil Nadu Undertakings.

5. It is submitted by the learned counsel appearing for the petitioner that pursuant to a tender notice issued by the second respondent for supply of a few items including plastic containers the petitioner supplied those items. The petitioner's claim is that more than Rs.13,00,000/- [Rupees Thirteen Lakhs] is



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due from the respondents towards supply of products manufactured and supplied by the petitioner. Since the respondents have not paid the amount, the petitioner has come forward with the above writ petition.

6. It is the case of the petitioner that under the provisions of the Micro, Small and Medium Enterprises Development (MSME) Act 2006, the buyers of the petitioner are liable to pay the money for the value of goods supplied by the Petitioner.

7. This is not a case where liability is admitted. In the counter affidavit filed by the first respondent, it is seen that the petitioner was a contractor listed with the third respondent and that the petitioner participated in the tender process through the third respondent. It is stated that that there was no contract between the petitioner and the first respondent, and that it was the third respondent who was the tender and received all payments. It was further stated that no payments are pending towards the purchase of materials to the third respondent. The third respondent has not filed any counter affidavit.



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8. It is in the said factual context, this Court has referred to Section 18

of the Micro, Small and Medium Enterprises Development Act (MSME) 2006

which reads as follows:

“Reference to Micro and small Enterprises Facilitation Council

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any



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institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”

9. It appears that there is no dispute about the fact that the petitioner is registered under the Act and that the petitioner is entitled to lay a claim against respondents by way of reference before the council constituted under the Act. Hence this writ petition with the above prayer is not maintainable. Therefore, this Court is unable to entertain this writ petition.



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10. Accordingly, this writ petition stands dismissed. However, the petitioner is given liberty to make a reference under the provisions of the Micro, Small and Medium Enterprises (MSME) Act 2006. Once an application is filed, the council may entertain the same taking into account the period of pendency of this writ petition while dealing with question of delay. The application submitted before the council may be disposed of in accordance with law within a period of six months on merits. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking/Non Speaking order

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