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W.P.No.14041 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.14041 of 2020
and W.M.P.Nos.17430 & 17431 of 2020

G.Ramakrishna Reddy

.. Petitioner

Vs.

1. The Chairperson,
Micro and Small Enterprises Facilitation Council, Chennai /
Industries Commissioner and Director of Industries
and Commerce, Guindy,
Chennai - 32.

2. The Secretary,
Micro and Small Enterprises Facilitation Council, Chennai,
Guindy, Chennai - 32.

3. S.Senthil Kumar

.. Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for records and quash th impugned order dated 25.02.2020 in MSEFC/CR/6/2019 passed by the 1st respondent.

For Petitioner : Mrs.Abhitha Banu
for Mrs.K.Pavithra

For Respondents 1 & 2 : Mr.S.Rajesh



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Government Advocate

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For Respondent 3 : Mr.M.Kandasamy

ORDER

Challenging the order dated 25.02.2020, passed by the Micro and Small Enterprises Facilitation Council directing the petitioner to pay a sum of Rs.46,26,595/- along with compounded interest, the petitioner has come forward with this writ petition.

2. The brief facts leading to the filing of this writ petition is that the 3rd respondent is engaged in the activity of Business of Electrical Supply, Installation, Testing and Commissioning Work and possesses UAM No.TN08E0045836. Towards the 14 invoices issued by the petitioner the 3rd respondent is yet to receive payment to the tune of Rs.46,26,595/- towards principal together with interest.

3. Therefore, the matter has been referred to the Micro and Small Enterprises Facilitation Council by the third respondent. After granting various adjournments to the parties finally the Council passed the impugned order directing the writ petitioner to pay a sum of Rs.46,26,595/- along with



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compounded interest with monthly rests at three times the bank rate.

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4. The main contention of the third respondent in the counter is that the Award passed by the Council cannot be challenged in a writ petition and it can be challenged only under Section 34 of the Arbitration and Conciliation Act by depositing 75% of the award amount. To avoid deposit of such amount in the appeal, writ petition has been filed. It is the case of the 3rd respondent that the invoices raised in a commercial contract has been defaulted and therefore the Micro and Small Enterprises Facilitation Council has considered the same and passed the order in accordance with law.

5. The learned counsel appearing for the petitioner though raised so many grounds in the writ petition, the main contention is that the impugned order is against the statutory procedure provided under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). According to her, no conciliation whatsoever has been conducted by the Council, which is mandatory in nature. Further, according to her, the award has been passed without following the provisions of the MSMED Act by referring the matter to conciliation and therefore such course is not permissible



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in law. Hence, the learned counsel submitted that once the award is passed following the procedure as contemplated under Section 18 of the MSMED Act, the writ petition cannot be maintained, however when the very procedure as contemplated under Section 18 of the MSMED Act has not been followed, the petitioner cannot be directed to go and challenge the Award under Section 34 of the Arbitration and Conciliation Act. Hence her contention is that the writ petition is very well maintainable.

6. The learned counsel appearing for the third respondent would submit that only to avoid deposit while challenging the award under Section 34 of the Arbitration and Conciliation Act, the writ petition has been filed. Hence he oppose the writ petition.

7. I have heard the learned counsel appearing for the parties and also perused the records carefully.

8. The very challenge is to the order passed under MSMED Act. Perusal of the impugned order it can be seen that except capturing the dates of hearing and adjournments sought, there was no reference whatsoever with



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regard to any document or evidence adduced before the Micro and Small Enterprises Facilitation Council. The order only captures the various adjournments given until paragraph 10. In paragraph 10, the the Council has held as follows:

"10. In the Council meeting held on 25.02.2020, the petitioner was present and represented by Thiru.S.Senthilkumar and the Respondent was present and represented by Thiru S.Senthilkumar. The Council observed that reconciliation of records had not been done by the Respondent and the Petitioner. The Council observed that in the final hearing Respondent was represented by a new representative who didn't possess a specific authorisation. Hence based on the merits of the case, the Council directed the Respondent to pay the principal amount along with the interest in accordance with Section 15 & 16 of the MSMED Act, 2006 and issued final orders."

9. This Court is unable to understand under what basis the learned Council has arrived at such conclusion. What are the documents relied upon by the Council, the order is silent.



10. Be that as it may, Section 18 of the MSMED Act deals with reference to Micro and Small Enterprises Facilitation Council. Section 18 reads as follows:

"Section 18. 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 institution



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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."

11. The above Section makes it clear that on any reference made to the Council, the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute. Sub Section 2 of Section 18 makes it clear that before passing any award conciliation is the norm and for conducting such conciliation, the provisions of



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Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply.

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12. On a perusal of the entire impugned order, there is no reference whatsoever with regard to conciliation. Further Sub Section 2 to Section 18 makes it clear that when the conciliation initiated is not successful and stands terminated without any settlement between the parties, thereafter the Council may either itself take up the dispute for Arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration. Therefore only when conciliation has failed, the matter has to be taken as dispute for arbitration. The moment the dispute is referred for arbitration then the provisions under the Arbitration and Conciliation Act will come into play, wherein, all the procedure contemplated under the Arbitration and Conciliation Act has to be followed scrupulously by giving opportunity to the parties to file claim statement and defence. Only thereafter the award may be passed based on evidence. Without conducting any conciliation or arbitration, the Council merely capturing some dates on which adjournments have been granted, passed the impugned final orders without reference to any documents. Therefore, this Court is of the view that such order cannot be construed as an award or order passed under Section 18 of the MSMED Act and direct the



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parties to seek remedy under Section 34 of the Arbitration and Conciliation

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13. Such view of the matter, the writ petition can be entertained when the authorities have failed to follow the mandatory procedure and passed the order. Therefore the impugned order dated 25.02.2020 is set aside and the matter is remanded back to the authorities. The authorities shall follow the procedure as contemplated under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 and proceed further by giving opportunity to both the parties and pass orders on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. Accordingly, this writ petition is allowed. Consequently the connected miscellaneous petitions are closed. No costs.

12.12.2022

Index : Yes / No

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To

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Industries Commissioner and Director of Industries
and Commerce, Guindy,



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2. The Secretary,
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N.SATHISH KUMAR, J.

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