



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM :

WEB COPY

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.2655 of 2021

M/s. Super Steam Boilers Engineers Pvt. Ltd.

Rep. by its Director Nazeer A.Kazi

Plot No.A.402, TTC Industrial Area

MIDC Village, Mahape

Navi Mumbai 400 701.

..

Appellant/Petitioner

Vs.

1. The Micro, Small Enterprises Facilitation Council

Coimbatore Region, Rep. by its Chairperson

Office of Industries Commissioner and

Director of Industries and Commerce

Guindy, Chennai 600 032

Tamil Nadu.

2. M/s. Unicon Engineers

Rep. by its Managing Partner P.Ponram

613-A/6, Bharathi Road

Chinnavedampatti Post

Coimbatore 6.

.. Respondents/Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 06.10.2021 made in W.P.No.20964 of 2021.

Prayer in WP.No.20964 of 2021: To issue a Writ of Certiorarified Mandamus Calling for the records relating to the proceedings in Case No.MSEFC / CBER / 219 / 2019 dated 10.12.2020 issued by the 1st respondent quash the same and consequently direct the 1st respondent to conduct the proceedings in accordance with Section 18 of the MSME Act 2006 and pass an order after affording sufficient opportunity to the Petitioner.

For the Appellant : Mr.R.Bharath Kumar

For the Respondents : Mr.D.Srinivasan
For Mr.B.Manoharan
for respondent-2



JUDGMENT
(Delivered by the Hon'ble Chief Justice)

By this writ appeal, a challenge is made to the order dated 06.10.2021, whereby the writ petition preferred by the appellant was dismissed.

2. The writ petition was filed to challenge the order dated 10.12.2020 passed by the Micro, Small Enterprises Facilitation Council. The challenge was made precisely alleging violation of Section 18(2) and (3) of the Micro, Small and Medium Enterprises Development Act, 2006. The writ petition was dismissed by the learned Single Judge mainly on the ground that the petitioner was given sufficient opportunities and had put forth their defence.

3. The impugned order has been challenged by the appellant alleging that the procedure under Section 18 of the Act of 2006 has not been followed by the Council. Therefore, the learned Single Judge ought to have caused interference with the order of the Council and remanded the case to the Council.

4. It is submitted that on a claim submitted by M/s. Unicon Engineers, the matter was taken up for conciliation as per Section 18(2) of the Act of 2006. Initially when the parties failed to agree to resolve the disputes in the conciliation proceedings, it was to be taken for arbitration. The conciliation proceedings were however continued to make an effort for amicable settlement of the dispute between the parties. When the settlement could not be arrived at in the conciliation proceedings, the matter was ordered to be taken up in arbitration as per Section 18(3) of the Act of 2006. But, without applying the procedure, an award was passed.

5. It is without calling the claim by the respondents herein and a defence or counter claim by the writ appellant. The procedure given under the Arbitration and Conciliation Act, 1996 was not applied. Yet, the writ petition was dismissed. However, the matter is to be taken by the Council, as has been clarified by the Apex Court in the case of Jharkhand Urja Vikas Nigam Limited v. The State of Rajasthan [2021 (4) CCC 476]. The prayer is, accordingly, to set aside the order of the learned Single Judge and the order of the Council and to remand the matter for arbitration as per the provisions of the Act of 1996.

6. The appeal has been opposed by learned counsel appearing for the side opposite. He submits that after the



efforts made by Council, when no settlement could be arrived at in conciliation, the matter was taken up for arbitration. It is no doubt that the matter was posted for arguments and for leading evidence by parties without calling for a claim and counter claim. The appellant had been given ample opportunities to defend and to make a counter claim. Thus, the order passed by the Council may not require interference. If at all an interference is to be made, it should be with a liberty to the non appellant to maintain a proper claim and thereupon, to proceed as per the provisions of the Act of 1996.

7. We have considered the rival submissions and perused the records.

8. A perusal of the order passed by the Council shows that initially the matter was taken up for conciliation and was deferred from time to time to settle the disputes in the interest of the parties. When the conciliation failed, an order was passed to take up the matter for arbitration invoking Section 18(3) of the Act of 2006. While taking a decision to arbitrate the matter, the procedure required for it has not been followed. The matter was ordered to be posted directly for arguments and for that, to lead evidence by the parties. Without realising that, after the failure of conciliation proceedings, the matter was to be taken up for arbitration as per the procedure.

9. The Council could have taken up the matter for arbitration or send it for independent arbitration as given under Section 18 of the Act of 2006. If at all the matter is taken up for arbitration, it should have been after calling for the claim and thereupon written statement from the side opposite with counter claim, if any. The procedure aforesaid was not followed and in view of the judgment of the Apex Court in the case of Jharkhand Urja Vikas Nigam Limited, it becomes clear that the procedure given under Section 18 of the Act of 2006 is mandatory in nature and when conciliation fails, the Council is empowered either to take up arbitration on its own or to refer it to any institution providing alternative dispute resolution services and the provisions of the Arbitration and Conciliation Act, 1996 to apply therein.

10. As the procedure therein has not been followed by the Council and it has not been appreciated by the learned Single Judge, we set aside the order passed by the Council as well as learned Single Judge and remand the matter to the Council to take up from the stage of Section 18(3) and thereby,



either to take up the case for arbitration by itself or to refer it to the institution or centre providing alternative dispute resolution services. The procedure given under the Act of 1996 would be applied for that.

WEB COPY

11. The writ appeal is allowed with the aforesaid directions. There will be no order as to costs. Consequently, CMP Nos.17275 and 18441 of 2021 are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

kpl

To

The Chairperson
Micro, Small Enterprises Facilitation Council
Coimbatore Region,
Office of Industries Commissioner and
Director of Industries and Commerce
Guindy, Chennai 600 032
Tamil Nadu.

+lcc to Mr.R.Bharath Kumar, Advocate SR.No.15457
+lcc to Mr.B.Manoharan, Advocate SR.No.15212

W.A.No.2655 of 2021

SVI (CO)
GN(16/03/2022)