



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. [MD]No.9174 of 2010

and

M.P. (MD) .No.2 of 2010

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Tuticorin Thermal Power Station,
a Unit of Tamil Nadu Electricity Board,
Represented by its Chief Engineer,
Harbour Estate, Tuticorin-628 004.

... Petitioner

Vs.

1.The Micro and Small Facilitation
Enterprises Facilitation Council,
Tiruchirapalli Region,
Represented by its Chairman,
District Industries Centre,
Tiruchirapalli-620 001.

2.M/s.Orion

Represented by its Managing Partner,
V.Chandran

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to O.P.No.10 of 2007 dated 12.04.2010 in File No.4045/A2/2006 of the first respondent and quash the same as illegal, unlawful and unconstitutional.

For Petitioner	: Mr.S.Deenadhayalan
For R-2	: Mr.C.Dhanaseelan
For R-1	: No Appearance

O R D E R

This Writ Petition has been filed challenging the award dated 12.04.2010 for a sum of Rs.35,17,123/- (Rupees Thirty Five Lakhs Seventeen Thousand One Hundred and Twenty Three only) passed by the first respondent / The Micro and Small Enterprises Facilitation Council in favour of the second respondent against the petitioner under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred as the MSME Act, 2006).

2. The petitioner has challenged the impugned award on the following grounds:

(a). The first respondent has no jurisdiction to receive any reference under the MSME Act, 2006, since the transactions between the parties had commenced during 1996, much prior to the coming into force of the said Act.



(b). The claim of the second respondent is barred by the law of limitation without filing an application under Section 5 of the Limitation Act seeking to condone the delay. The first respondent Council has entertained the claim of the second respondent against the petitioner.

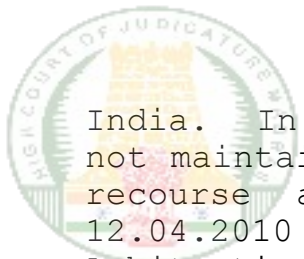
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(c). Despite the admission made by the second respondent in their letter dated 10.07.1999 that the goods supplied by them are defective, the first respondent has passed an award in favour of the second respondent against the petitioner, which is perverse.

(d). The first respondent had conducted the proceedings in gross contravention of Section 18 of the MSME Act, 2006 and there was no conciliation, much less an adjudication of the real dispute in hand in letter and spirit under the said Section and the award, dated 12.04.2010 passed by the first respondent in favour of the second respondent against the petitioner is conspicuously silent about the preliminary objections raised by the petitioner and the same has been recklessly brushed aside and given quiet burial in the award.

3. The petitioner has admittedly not challenged the award dated 12.04.2010 passed in favour of the second respondent calling upon the petitioner to pay a sum of Rs.35,17,123/- (Rupees Thirty Five Lakhs Seventeen Thousand One Hundred and Twenty Three only) in the manner known to law. The award, dated 12.04.2010 passed by the first respondent in favour of the second respondent against the petitioner in O.P.No.10 of 2007 was passed under Section 18 (5) of the MSME Act, 2006. It is made clear in Section 18 (3) of the said Act that the provisions of the Arbitration and Conciliation Act, 1996 shall apply for arbitrations initiated under the MSME Act, 2006. Therefore, any award passed by the first respondent Council under the MSME Act, 2006 has to be challenged only under Section 34 of the Arbitration and Conciliation Act, 1996. Instead of challenging the same under the said provision, the petitioner has chosen to file this Writ Petition.

4. The petitioner has raised several grounds as referred to supra. The petitioner has also participated in the arbitration initiated by the first respondent Council under the MSME Act, 2006 subsequent to the failure of the conciliation between the parties. The grounds raised in this writ petition before the first respondent Council which has been rejected are culminated in passing of an award dated 12.04.2010 in favour of the second respondent against the petitioner in O.P.No.10 of 2007 which is the subject matter of challenge in this writ petition. In fact, as per Section 19 of the MSME Act, 2006 any challenge to the award passed by the first respondent Council is maintainable only on deposit of 75% of the award amount. Instead of following the procedure contemplated under Sections 18 and 19 of the MSME Act, 2006, the petitioner has approached this Court under Article 226 of the Constitution of



India. In the considered view of this Court, this writ petition is not maintainable. If at all, the petitioner is aggrieved, the only recourse available to them is to challenge the award dated 12.04.2010 by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 which they have failed to do so. But instead they have filed this writ petition which is not maintainable.

5. A counter-affidavit has also been filed by the second respondent denying all the allegations of the petitioner with regard to the allegations of the poor quality goods supplied by the second respondent to the petitioner. According to the second respondent, only in accordance with the terms and conditions of supply, the goods were supplied to the petitioner. In the counter-affidavit, they have also contended that this writ petition filed by the petitioner is not maintainable,

6. For the foregoing reasons, this Court does not find any merit in this writ petition and the same is not maintainable. In the result, this writ petition stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

tsg

NOTE: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1.The Chairman,
Micro and Small Facilitation
Enterprises Facilitation Council,
Tiruchirapalli Region,
District Industries Centre,
Tiruchirapalli-620 001.

+1 CC to M/s.C.DHANASEELAN, Advocate (SR-7540[F] dated 21/02/2022)
+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-7858[F] dated 22/02/2022)

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22.02.2022