



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.8556 of 2021

and

W.M.P. (MD) No.6437 of 2021

WEB COPY

M/s.Ashok Leyland
77, Electronic Complex,
Perandapalli,
National Highway 7,
SIPCOT Ph-III Industrial Complex,
Krishnagiri 635 001.

... Petitioner

/vs./

1.MSE Facilitation Council,
represented by its Chair Person,
Madurai Region/Industries Commissioner and
Director of Industries and Commerce,
Guindy, Chennai 600 032.

2.M/s.Monarch Industrial Products (I) Private Limited,
Post Box No.3,
No.25, SIDCO Industrial Estate,
Theni 625 531.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent culminating into order dated 26.11.2020 passed in Case No.MSEFC/MDU/41/2019 and quash the same and to direct the First Respondent to refer the online application No.TN/23/S/MDR/00147 (Case No.MSEFC/MDU/41/2019) dated 19.11.2019 of the Second Respondent to arbitration, in accordance with the provisions of Section 18(3) of MSMED Act.

For Petitioner : Mr.V.Kuberan for
M/S.Rank Associates
For R1 : No appearance
For R2 : Mr.J.Vishnu

ORDER

The petitioner has challenged the impugned order of the 1st respondent dated 26.11.2020.

2.The impugned order is primarily challenged on the ground that there is a gross violation of Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (herein after referred to as 'Act'). The impugned order states that the case was listed on 8



different occasions and despite the same, the petitioner herein failed to appear before the 1st respondent in response to the application filed by the 2nd respondent in case No.MSEFC/MDU/41/2019.

3.It is specifically stated that the hearings conducted by the 1st respondent cannot be treated as a conciliation process, since as per Section 76 of the Arbitration and Conciliation Act, 1996, the conciliation proceedings can come to an end either when the parties enter into a settlement agreement or when the Conciliator or the parties inform in writing that the conciliation is terminated.

4.It is further submitted that the Conciliator also does not have the power to pass orders and can only formulate the terms of possible settlement and since in this case, the 1st respondent has proceeded to pass the impugned order, the impugned order is liable to be set aside. In this connection, a reference was made to the decision of this Court in W.P.Nos.18282 to 18287 of 2015 (**M/s.Ramesh Conductors P.Limited and other Vs. M & CE Facilitation Council (Micro & Small Enterprises, and another)**) dated 24.11.2015.

5.Opposing the prayer, the learned counsel for the 2nd respondent submits that the writ petition is not maintainable as there is a statutory embargo under Section 19 of the Act. It is submitted that as per Section 19 of the Act, no application for setting aside any decree, award or other order made either by the council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any Court unless the appellant has deposited with it 75% of the amount in terms of decree, award or as the case may be, the other order in the manner directed by such Court.

6.In this case, it is submitted that no deposit has been made so far and therefore even otherwise the writ petition is devoid of merits. It is submitted that the order passed by the 1st respondent is an award within the meaning of Arbitration and Conciliation Act, 1996 and the petitioner can only approach the Court under Section 34 of the aforesaid Act and that writ remedy is not available to the petitioner.

7.The learned counsel for the 2nd respondent further submits that the petitioner has been absent and therefore, the 1st respondent was compelled to pass the award and since the petitioner was careless in not appearing before the 1st respondent and further the petitioner cannot challenge the impugned order passed by the 1st respondent.

8.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the 2nd respondent.



9.The Micro, Small and Medium Enterprises Development Act, 2006 has been passed with a view to facilitate promotion and development and enhancing the competitiveness of micro, small and medium enterprises. The proceedings under the aforesaid Act are to be completed in a time bound manner. As per Section 18(5), every reference made to the 1st respondent shall be decided within a period of 90 days from the date of making such a reference.

10.In this case, a reference was made as early as 18.11.2019. The petitioner appears to have filed the defense only on 17.03.2020. Thereafter, the case was adjourned on several occasions as has been detailed in the impugned order of the 1st respondent. The petitioner has been absent on most of the occasions and therefore, they cannot complaint that the conciliation has not taken place and since conciliation has not taken place, the impugned award was not an award within the meaning of the Act r/w Arbitration and Conciliation Act, 1996. Therefore, there is no merits in the writ petition. The petitioner has an alternate effective remedy under Section 34 of the Act after due compliance of proviso to Section 19 of the Act. The petitioner is required to deposit 75% of the amount in terms of the decree, award or as the case may be, the other order in the manner directed by such Court.

11.Under these circumstances, the writ petition stands dismissed with liberty to the petitioner to approach the competent Court under Section 34 of the Arbitration and Conciliation Act, 1996. The time spent before this Court shall stand excluded of computation of the limitation. If such application is filed under Section 34 of the Arbitration and Conciliation Act, 1996, it is open for the petitioner to convince the Court that the application is in time and the time spent before this Court is to be excluded. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

The Chair Person,
MSE Facilitation Council,
Madurai Region/Industries Commissioner and
Director of Industries and Commerce,
Guindy, Chennai 600 032.

+1 CC to M/s.T. SENTHIL KUMAR, Advocate (SR-16568[F] dated 05/04/2022)

W.P. (MD) No.8556 of 2021
04.04.2022

SS/11.05.2022 : 3P/3C

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