



W.P. No. 9682 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 9682 of 2022

and

W.M.P. Nos. 9420, 9421 and 9789 of 2022

The Chief Engineer
Transmission
Tamil Nadu Transmission Corporation Ltd
144, Anna Salai, Chennai-600002.

... Petitioner

-VS-

1. Micro Small Enterprises Facilitation Council
and Industries Commissioner and Director of Industries
and Commerce, Represented by its Chairman
Sidco Corporate Building
Guindy, Chennai – 600032.

2. M/s. Alvittas Electrical Pvt. Ltd.
Rep. By its Director /Authorized Signatory
No.60, (Old No.33) Kasturi Rangan Road
Alwarpet, Chennai – 600 018.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 2050, praying to issue a Writ of Certiorari, calling for the records of the First Respondent culminating the order No. MSEFC/CF/26/2018 dated 18.12.2018 of the Second Respondent to arbitration in accordance with the Provisions of Section 18(3) of the MSMED Act and quash the same.



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For Petitioner : Mr. S.Madhusundanan

For Respondents : Mr. S.Yashwanth,
Additional Government Pleader
(for R1)

Mr. Y.Ramanaiah (for R2)

ORDER

Heard Mr. S.Madhusundanan, Learned Counsel for the Petitioner, Mr. S.Yashwanth, Learned Additional Government Pleader appearing for the First Respondent and Mr. Y.Ramanaiah, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent had made a claim in Case No. MSEFC/CF/26/2018 before the First Respondent under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSMED Act' for short), claiming payment of Rs.12,66,591/- from the Petitioner towards balance amount of interest due for goods supplied with interest calculated in terms of that Act, in which an order dated 18.12.2018 was passed holding that the Petitioner was liable to pay that amount in view of



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the dictum laid down by the Hon'ble Supreme Court of India in *M/s. Modern*

WEB INDUSTRIES -vs- M/s. Steel Authority of India Ltd., (Order dated 15.10.2010 in Civil Appeal Nos. 3305-3306 of 2010), which is challenged in this Writ Petition.

3. In response to the contentions raised by the Second Respondent that if the Petitioner is aggrieved by the impugned order, it has to only resort to filing of an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the A & C Act' for short) to have it set aside as an arbitral award, Learned Counsel for the Petitioner has placed reliance on the decision of the Hon'ble Supreme Court of India in *M/s. Vijeta Construction -vs M/s. Indus Smelters Ltd.*, (Order dated 23.09.2021 in Civil Appeal No. 5934 of 2021), where after referring to the relevant provisions of the MSMED Act and A & C Act, it has been held that the discretionary powers of the High Court under Article 226 of the Constitution could be invoked when the prescribed procedure for conciliation has not taken place before passing the arbitral award in such matters. It has been highlighted from the impugned order that there is nothing to show that the prescribed procedure for conciliation as required under the MSMED Act had been followed before proceeding to pass the arbitral award, which would vitiate it in this case.



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4. In such circumstances, the impugned order dated 18.12.2018 in Case No. MSEFC/CF/26/2018 passed by the First Respondent is set aside and the claim made by the Second Respondent is restored to file of the First Respondent, who shall list the matter for next hearing on 07.02.2024 for conducting the conciliation proceedings after issuing due notice to the Petitioner and the Second Respondent in that regard and if the First Respondent is not able then to take up the matter, the date to which it is adjourned shall be informed to the parties under written acknowledgment. It shall be ensured by the First Respondent that there are atleast two effective hearings every month showing progress of the case, that full opportunity of hearing is afforded to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised with reference to the evidence lead by the parties on merits and in accordance with law, uninfluenced and uninhibited by the impugned order, which has been set aside and that the decision taken shall be communicated to the concerned parties under written acknowledgment and the report of such compliance is filed before the Registrar (Judicial) of the Court.



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Consequently, the connected Miscellaneous Petitions are closed. No costs.

30.10.2023

Maya

NCS:Yes/No

Index: Yes/No

Note: Issue order copy by 08.01.2024.

To

1. The Chairman, Micro Small Enterprises Facilitation Council
and Industries Commissioner and Director of
Industries and Commerce,
Sidco Corporate Building
Guindy, Chennai – 600032.
2. The Director/Authorized Signatory
M/s. Alvittas Electrical Pvt. Ltd.
No.60, (Old No.33) Kasturi Rangan Road,
Alwarpet, Chennai – 600 018.
3. The Chief Engineer
Transmission
Tamil Nadu Transmission Corporation Ltd
144, Anna Salai, Chennai-600002.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.



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P.D. AUDIKESAVALU, J.

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