



W.A.No.178 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:07.08.2023

Delivered on: 21.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

AND

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**W.A.No.178 of 2019**

**&**

**C.M.P.No.1739 of 2019**

M/s. Funkskool (India) Limited  
826, Anna Salai  
Tarapore Towers  
Chennai-600 002

...Appellant

Vs.

1.Micro Small Enterprises Facilitation Council  
rep by its Chairman  
Industries Commissioner and  
Director of Industries and Commerce  
Chepauk, Chennai-600 005

2.M/s. Sahan Woods  
486/4, Kadambankulam road  
Valliyoor-627 109  
Tirunelveli District.

...Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.1484 of 2013 dated 01.10.2018.



W.A.No.178 of 2019

For Appellants : Mr.M.Vijayan  
for  
M/s. King and Partridge

For Respondents : Mrs.Geetha Thamaraiselvan, Spl.G.P for R1  
MR.P.Sesubalan Raja for R2

### **JUDGMENT**

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful Writ Petitioner is the appellant before us.

2. The appellant filed the Writ Petition challenging the order dated 07.12.2012 passed in O.P.No.1/MS/EFC/2012 on the file of the 1st respondent.

3. Brief facts that are necessary for disposal of the Writ Appeal are as follows:

In relation to Purchase Order No.2733, certain disputes and differences arose between the appellant/petitioner and the 2nd respondent herein. In order to recover the alleged amounts due from the



W.A.No.178 of 2019

WEB COPY

petitioner/appellant, the 2<sup>nd</sup> respondent approached the 1<sup>st</sup> respondent, Council. The 1<sup>st</sup> respondent after hearing the appellant as well as the 2<sup>nd</sup> respondent proceeded to pass the impugned order. According to the appellant, the 1<sup>st</sup> respondent passed the impugned order without any jurisdiction and the award passed was in total violation of principles of natural justice, besides also resulting in grave miscarriage of justice. It is the specific case of the appellant that the procedure mandated under Sec.18 of The Micro, Small and Medium Enterprises Development Act, 2006 (in short 'MSMED Act') was also not followed and therefore the award passed by the 1<sup>st</sup> respondent was liable to be set aside. However, the Writ Court after hearing the parties held that there is a provision for appeal under the Act and without exhausting the same, the Writ Petition was not maintainable.

4. Aggrieved by the dismissal of the Writ Petition, the Writ Petitioner has preferred the above Writ Appeal.

5. We have heard Mr.M.Vijayan, for M/s. King and Partridge, learned counsel for the appellant, Mrs.Geetha Thamaraiselvan, learned Special



W.A.No.178 of 2019

WEB COPY

Government Pleader for R1 and Mr.P.Sesubalan Raja, learned counsel for 2nd respondent and we also perused the records besides the order of the Writ Court.

6. The main grievance of the appellant is that the procedure mandated U/s. 18 of the MSME Act has been flouted by the 1<sup>st</sup> respondent and the award passed consequent to such flagrant violation of statutory provision was not an award passed in accordance with law and therefore resort can be had to Writ jurisdiction, without availing the appeal remedy available under the Statute.

7. Sec. 18 of the MSME Act is extracted for easy reference:

*“ 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*



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W.A.No.178 of 2019

*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 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.*



W.A.No.178 of 2019

WEB COPY

*(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”*

8. On a careful reading of the above provision, it is clear that when the Council receives a reference regarding any dispute pertaining to amount due and payable, then the Council shall conduct a conciliation either by itself or by seeking the assistance of any institution or centre providing alternate dispute resolution services by making a reference for conducting conciliation in terms of Secs. 65 to 81 of the Arbitration and Conciliation Act, 1996. Sub-Sec(3) of Sec.18 makes it very clear that when the conciliation initiated under Sub-Sec(2) is unsuccessful and stands terminated without any settlement arrived at between the parties, then the Council should either take up the dispute for arbitration or refer the same to any institution or centre providing such services for conducting arbitration proceedings as applicable under Arbitration and Conciliation Act, 1996.

9. Sec.19 deals with the Appeal remedy as against any decree, award



W.A.No.178 of 2019

WEB COPY

or other order made either by the Council or by the institution or centre to which the matter has been referred by the Council. This Section has been put against the appellant by the Writ Court while dismissing the Writ Petition.

10. It is the specific contention of the learned counsel for the appellant that there was absolutely no reference for arbitration as required U/s.18 (3) of the Act. The parties presented themselves only for conciliation U/s. 18(2). According to the learned counsel for the appellant, there was no arbitration proceedings at all. Therefore, the impugned order was clearly without jurisdiction and liable to be set aside.

11. Per contra, learned counsel for the 2<sup>nd</sup> respondent would submit that the appellant as well as the 2<sup>nd</sup> respondent appeared before the 1<sup>st</sup> respondent Council and the appellant was also represented by an Advocate and filed a counter also. Therefore, it is not open to the appellant to contend that there is no arbitration proceedings at all and he would further contend that the impugned order passed in O.P.No.1/MSEFC/2012 was not one without jurisdiction and therefore no interference is warranted as the



W.A.No.178 of 2019

WEB COPY

Writ Court has also rightly found that an Appeal remedy is available as against such order passed.

12. We find that in the impugned order, the 1<sup>st</sup> respondent refers to reference dated 11.05.2011(wrongly typed as 11.04.2012 in the impugned order passed by the 1<sup>st</sup> respondent). Apart from the said date, we do not find any material to establish the fact that conciliation proceedings mandated U/s. 18(2) were held and terminated as unsuccessful before the Arbitration proceedings commenced. Even the impugned order does not proceed on the footing that it was an Arbitration proceeding in terms of Sec.18(3) of the Act.

13. On a perusal of the said representation dated 11.05.2011 sent by the 2<sup>nd</sup> respondent to the 1<sup>st</sup> respondent, we are able to see that the 2<sup>nd</sup> respondent has requested the 1<sup>st</sup> respondent to take action enable the 2<sup>nd</sup> respondent to recover the alleged amount due from the appellant.

14. A reply was sent by the appellant on 23.05.2011, stating that no amount was due and payable by the appellant. It is only in furtherance of



W.A.No.178 of 2019

WEB COPY

application from the 2<sup>nd</sup> respondent for direction to the appellant to pay the 2<sup>nd</sup> respondent a sum of Rs.6,84,638/-. No doubt, the appellant has also chosen to file a counter to the said application denying his liability to pay any amount to the 2<sup>nd</sup> respondent. Thereafter, the 1<sup>st</sup> respondent appears to have proceeded with the matter and passed the impugned judgment without recording any evidence of the parties or their exhibiting necessary documents.

15. The grievance of the appellant in this regard is certainly genuine. From the mandate of Sec.18 of MSMED Act, immediately on receipt of a reference from party regarding the amount due to it, the Council viz., the 1st respondent shall conduct conciliation first and only if the conciliation proceedings fail, there upon the Council has to either take up the dispute for Arbitration or refer it to any institution or centre providing such Arbitration services. Sec.18(3) also makes it clear that the provisions of the Arbitration and Conciliation Act, 1996 shall apply to such disputes. From the records and admitted facts before us, we are able to see that no such conciliation proceedings were held. The appearance of the 2<sup>nd</sup> respondent and appellant before the 1<sup>st</sup> respondent, at best, could only be treated as



W.A.No.178 of 2019

WEB COPY

only conciliation proceedings and not as Arbitration proceedings U/s. 18(3) of the MSMED Act. The Council/1<sup>st</sup> respondent first has to first terminate the conciliation proceedings as not successful and only thereafter the matter can be taken up for Arbitration. Here admittedly, such a procedure has not been followed. Moreover, besides the application and counter filed by the parties, the Council has not given any opportunity to the parties to lead evidence, file documents etc., and conduct a regular arbitration proceeding before proceeding to pass the judgment. Infact, the learned Special Government Pleader has submitted a proceedings in R.C.No.2675/D4/2023 dated 29.07.2023 stating that no separate order was passed by the 1<sup>st</sup> respondent regarding failure of conciliation. Thus, this is a clear case where there has been violation of specific mandate of Sec.18(2) of MSMED Act. We find no infirmity in the Writ Court entertaining the Writ Petition filed under Article 226 of the Constitution of India, though the Writ Petitioner had an alternative remedy under the Statute.

16. We have also found that impugned judgment of the Council has been passed in violation of principles of natural justice i.e., without



W.A.No.178 of 2019

WEB COPY

affording a reasonable or fair opportunity to the parties to lead evidence and exhibit relevant documents. We are therefore constrained to interfere with the order of the Writ Court.

In fine, for all the above reasons, the Writ Appeal stands allowed and the order passed in W.P.No.1484 of 2013 dated 07.12.2012 is set aside with liberty to the parties to proceed in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

**(D.K.K.J) & (P.B.B.J)**  
21.08.2023

Internet : Yes  
Index: Yes/No  
Neutral Citation: Yes/No

To

The Chairman  
Micro Small Enterprises Facilitation Council  
Industries Commissioner and  
Director of Industries and Commerce  
Chepauk, Chennai-600 005



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W.A.No.178 of 2019

**D.KRISHNAKUMAR, J.,**  
**and**  
**P.B.BALAJI, J**

(kpr)

**Pre-delivery judgment in**  
**W.A.No.178 of 2019**

21.08.2023