



W.P.No.19483 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19483 of 2024 and
WMP.No.21334 of 2024

T.Ravi

... Petitioner

Vs.

- 1.M/s.Micro Small Enterprises Facilitation Council,
Chennai Region,
Rep. By its Chairman,
Chennai-28
- 2.M/s.Micro Small Enterprises Facilitation Council,
Rep. By its Chair Person,
Industries Commissioner and Director of Industries and Commerce
Guindy, Chennai 600 032
- 3.M/s.Siva Energy Infrastructure Pvt., Ltd.,
No.23, Riverview Road,
Dr.Ambedkar Nagar,
Manapakkam,
Chennai -116
- 4.M/s.Dhanalakshmi Srinivasan Medical Collage,
Represented by its Chairman S.Kathiravan,
Perambalur,
Perambalur District

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari and thereby call for the records of the impugned proceedings and quash of the impugned order dated



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19.12.2023 passed by the second respondent against the petitioner.

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For Petitioner : M/s.S.Yogalakshmi

For Respondents

For R1 & 2 : Mr.N.Naveenkumar,
Government Advocate

For R4 : Mr.S.Ramachandran

ORDER

This writ petition has been filed challenging the award dated 19.12.2023 passed by the second respondent under Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter called as 'MSMED Act, 2006') thereby allowed the application filed by the third respondent and directed the petitioner to pay principal amount of Rs.15,25,076/- along with compound interest with monthly rests.

2. The petitioner is engaged in the field of civil construction works. While being so, the petitioner was entrusted with construction of building works for staff quarters in A, B & C blocks including electrical, plumbing works to the fourth respondent. The third respondent is known to the fourth respondent, who availed the service of the third



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respondent to carry out electrical works. In turn, there is no contractual relationship exists directly between the petitioner and the fourth respondent. The petitioner has no liability for the electrical work done by the third respondent. For electrical work, the third respondent was paid a sum of Rs.25,88,210/- and the same was duly informed to the third respondent by the petitioner. In fact the petitioner also claimed repayments from the fourth respondent. However, the third respondent failed to do the electrical work in proper manner and failed to meet out the expectations of the petitioner. Therefore, the dispute exists between the third and fourth respondents. In view of the same, whatever the payment from the fourth respondent, is pending from the fourth respondent. Therefore, there is no due from the petitioner to the third respondent. However, the third respondent filed claim petition by invoking provisions of MSMED Act, 2006 before the second respondent. On receipt of the same, the second respondent called upon the petitioner to participate in the conciliation proceedings as contemplated under Section 18(2) of MSMED Act, 2006. However, without even giving opportunity of hearing to the petitioner, the second respondent passed



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order on 24.02.2016. thereby directed the petitioner to pay a sum of Rs.15,25,076/- together with compound interest with monthly rests. It was challenged before this Court in WP.No.22262 of 2016 and this Court by order dated 22.07.2022, set aside the award and remanded the matter back to the second respondent for fresh consideration by following procedure contemplated under Section 18(3) of MSMED Act, 2006. As directed by this Court, the second respondent conducted meeting through video conference. In the video conference, the petitioner attended conciliation and also filed counter. However, the third respondent had taken time to file a rejoinder to the counter filed by the petitioner. Therefore, it was adjourned and on that day, the petitioner was present. Finally for appearance of the third respondent, it was adjourned to 23.11.2023 . On that day, the petitioner was absent before the second respondent and granted further time to the third respondent to file rejoinder. All of sudden, the second respondent passed award on 19.12.2023 and directed the petitioner to pay a sum of Rs.15,25,076/- along with compound interest with monthly rests.



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3. The learned counsel appearing for the petitioner would submit that the second respondent once again failed to follow the procedures as contemplated under Section 18(2) and 18(3) of MSMED Act, 2006. Though this Court specifically directed the second respondent to follow the procedure contemplated under Section 18(3) of MSMED Act, 2006, the second respondent failed to follow the same and committed same mistake. The petitioner was not served with any notice while initiating arbitration proceedings. The petitioner was not given opportunity of hearing and the second respondent mechanically once again passed the very same award.

4. The learned counsel for the second respondent would submit that after issuing notice to the petitioner and after giving opportunity of hearing, then only award has been passed thereby directions issued by this Court was duly complied with. That apart, the writ petition is not maintainable and the petitioner ought to have filed a petition under Section 23 of the Arbitration and Conciliation Act challenging the award passed by the second respondent.



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5. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

6. On perusal of the award passed by the second respondent dated 19.12.2023, the conciliation proceedings failed. Subsequently on 19.12.2023, award has been passed by the second respondent. In fact, on 23.11.2023, the third respondent was present and petitioner was absent. On that day, the counsel for the third respondent had taken time to file a rejoinder to the counter filed by the petitioner. However, on 19.12.2023 award came to be passed by the second respondent. After initiation of arbitration proceedings on 19.12.2023 and on the said day, award has been passed on the ground that the petitioner was given sufficient opportunity and even then, he failed to appear and failed to disprove the claim of the third respondent.

7. Therefore, the second respondent failed to follow the procedure as contemplated under Section 18(3) of MSMED Act, 2006.



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Unless otherwise agreed, oral evidence are to be held. After closing the conciliation proceedings, while commencing arbitration proceedings as contemplated under Section 18(3) of MSMED Act, 2006, the second respondent shall record the failure of conciliation proceedings and initiate an adjudicatory procedure as an arbitrator. Further, it is obligatory on the part of the second respondent to inform parties about the change of face from that of conciliator to that of an arbitrator, so that the parties will be made to understand that they are participating in the adjudicating process, which will result in a binding order having impact on their rights.

8. On perusal of the award passed by the second respondent, there is nothing available to show regarding, at what point of time, the second respondent council acquired the character of arbitrator from that of conciliator. Therefore, award itself is non est in the eye of law and it cannot be sustained.

9. In view of the above, award passed by the second respondent cannot be sustained and the same is liable to be quashed. Accordingly,



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the impugned award dated 19.12.2023 passed by the second respondent is quashed. The matter is remanded back to the second respondent and the second respondent is directed to complete the arbitration proceedings by following the provisions and procedures under Section 18(3) of MSMED Act, 2006 and to pass award within a period of twelve weeks from the date of receipt of copy of this order.

10. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.Chairman,
M/s.Micro Small Enterprises Facilitation Council,
Chennai Region,
Chennai-28
- 2.Chair Person,
M/s.Micro Small Enterprises Facilitation Council,
Industries Commissioner and Director of Industries and Commerce
Guindy, Chennai 600 032
- 3.M/s.Siva Energy Infrastructure Pvt., Ltd.,
No.23, Riverview Road,
Dr.Ambedkar Nagar,
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- 4.S.Kathiravan,
Chairman,
M/s.Dhanalakshmi Srinivasan Medical Collage,
Perambalur,
Perambalur District



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G.K.ILANTHIRAIYAN, J.

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