



WEB COPY



W.P. No.30385 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.30385 of 2017

and

W.M.P. Nos.33124 of 2017 and 6474 of 2018

M/s.Sri Mookambigai Constructions
(India) Pvt. Ltd.,

Rep. By its Director,

K.M. Namachivayam

..... Petitioner

VS.

1. The Micro, Small & Medium
Enterprises,
Facilitation Council,
Chennai Region,
Rep. by its Zonal Officer,
Coimbatore Region / General Manager,
District Industries Centre,
Coimbatore.

2. M/s. Premier Plate Fabrications,
Rep. by its Managing Partner,
S.M. Sadhasivam,
No.355/1-B, Abbas Garden,
Near Luna Nagar,
TVS Nagar,
Thadagam Road,
Coimbatore.

.... Respondents



W.P. No.30385 of 2017

Prayer Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records in Case No.M & SEFC/CBER/4/2016, dated 17.11.2016, on the file of the 1st respondent and quash the same and further to direct the first respondent to decide the matter on merits in accordance with law.

For Petitioner : Mr. K. Chozhan

For Respondents : Mr.L.S.M. Hasan Fizal,
Addl. Government Pleader for R1
Mr.A.V. Arun
for Mr.P. Kumanan for R2

ORDER

This writ petition has been filed to call for the records in Case No.M & SEFC/CBER/4/2016, dated 17.11.2016, on the file of the 1st respondent and quash the same and further to direct the first respondent to decide the matter on merits in accordance with law.

2. The brief facts of the case are as follows :-

The 2nd respondent had approached the petitioner for supply of MC molds for the unit of the petitioner and based on the specifications, the 2nd respondent issued quotation and being satisfied with the said quotation, the petitioner had issued Purchase Order for the same. Further at the time of placing Purchase Order, an amount of Rs.10,00,000/- was paid to the 2nd



W.P. No.30385 of 2017

respondent for the aforesaid job. While so, it is stated that the products supplied by the 2nd respondent was not as per the specifications and the same was also reported to the 2nd respondent, but no action was taken by the 2nd respondent to rectify the same and instead the 2nd respondent urged the petitioner for payment of the balance amount. At this juncture, the petitioner had cancelled the order and sent an email to that effect. Thereafter, the 2nd respondent approached the 1st respondent, who in turn issued the impugned demand, dated 17.11.2016, thereby the petitioner was directed to pay compensation to the 2nd respondent. Aggrieved over the same, this writ petition has been filed.

3. Learned counsel for the petitioner submitted that firstly, the goods received by the petitioner from the 2nd respondent did not satisfy the specifications prescribed by the petitioner and the defects pointed out by the petitioner were also not rectified by the 2nd respondent. Secondly, due to the deliberate act of the 2nd respondent demanding the balance payment the same caused much hardship to the petitioner as the terms agreed upon by the parties were not fulfilled. Thirdly, he submitted that the 2nd respondent approached the 1st respondent, wherein the grievances of the 2nd respondent were ventilated, but the case of the petitioner was not at all



W.P. No.30385 of 2017

taken note of. Also, he submitted that the 1st respondent prior to passing of the impugned order, failed to follow the provisions contemplated under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (for brevity hereinafter referred to as MSMED Act) and therefore, the same is highly arbitrary and perverse. He further pointed that the impugned order was passed without affording an opportunity of hearing the petitioner and further no documents were also marked before the Facilitation Council.

4. In support of the aforesaid submissions, he relied upon the orders passed by this Court, which are stated hereunder :-

- i) Order dated 14.03.2022 in W.P. No.5733 of 2022
- ii) Order dated 29.09.2023 in W.P. No.25062 of 2023
- iii) Order dated 05.09.2024 in W.P. Nos.10408 and 10415 of 2024.

5. Drawing the attention of this Court to paragraph Nos.6 to 11 of a recent order, dated 05.09.2024 in W.P. Nos.10408 and 10415 of 2024 as referred to supra, he further submitted that due to non compliance of the said procedures, the impugned order passed by the 1st respondent is unsustainable. Particularly, while concluding his arguments, learned



W.P. No.30385 of 2017

counsel submitted that the 1st respondent ought to have followed the procedures contemplated under Section 18(3) of the MSMED Act and therefore, he prays for quashment of the impugned order.

6. Mr.A.V. Arun, learned counsel appearing for the 2nd respondent submitted that after following the procedures, the order, which is impugned herein was passed by the 1st respondent. He further submitted that initially an expert was appointed and thereafter a joint inspection was conducted and these points were reflected in the impugned order. He also submitted that subsequent to passing of the order on 17.11.2016 by the 1st respondent, proceedings were initiated before the NCLT. So, when that be so, challenging the order, which was passed in the year 2016 without approaching the NCLT is grossly erroneous and the petition deserves to be dismissed.

7. He drew the attention of this Court to the judgments of the Hon'ble Supreme Court in the cases of i) ***Gujarat State Civil Supplies Corporation Ltd., vs. Mahakali Foods Private Ltd. and another reported in (2023) 6 SCC 401*** and ii) ***India Glycols Ltd. and another vs. Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and***



W.P. No.30385 of 2017

Others reported in 2023 SCC Online SC 1852 in support of his case.

Hence, he strongly opposed the quashment of the said order, dated 17.11.2016 passed by the 1st respondent.

8. Learned Additional Government Pleader appearing for the 1st respondent submitted that after following the procedures contemplated under the MSMED Act, the order, dated 17.11.2016 was passed by the 1st respondent and thereby the petitioner is liable to pay a sum of Rs.11,00,052/- together with eligible interest.

9. Heard the learned counsel on either side and perused the materials placed on record.

10. Admittedly, the 2nd respondent had approached the petitioner for the supply of MC molds for petitioner's unit and certain specifications were agreed between them and subsequently Purchase Order was also issued. From the aforesaid submissions, it is clear that the petitioner has paid the initial payment to the 2nd respondent at the time of placing the purchase order. It is borne out by record that due to certain defects, the Purchase Order was cancelled by the petitioner and thereafter the 2nd



respondent approached the 1st respondent in respect of the aforesaid cancellation. Now the only issue that requires determination is whether the 1st respondent before passing of the order, which is impugned herein has followed the procedures contemplated under Chapter V of the Arbitration and Conciliation Act.

11. Even on a cursory reading of the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, it is clear that the procedures to be followed by an Arbitrator while conducting arbitral proceedings are governed by Chapter-V of the Arbitration and Conciliation Act, 1996 (i.e., Sections 18 to 27 of Arbitration Act). Of these provisions, Sections 23 and 24 of the Arbitration and Conciliation Act, 1996 are useful in deciding the dispute in this writ petition, the same reads as follows:-

“23. Statements of claim and defence

(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

[(2A) The respondent, in support of his case, may also submit a



counter-claim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.]

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

[(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case maybe, received notice, in writing of their appointment.]

24. Hearings and written proceedings

(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:

[PROVIDED FURTHER that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.]

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be



WEB COPY



W.P. No.30385 of 2017

communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.”

12. On a close scrutiny of the above mentioned Section 18 of the MSMED Act and the above mentioned provisions of Arbitration & Conciliation Act, it is clear that in cases where conciliation attempted under Section 18(2) of MSMED Act ends in failure, the 1st respondent-Council has to record the same and terminate the conciliation proceedings. Thereafter, it shall commence arbitration proceedings under Section 18(3) of MSMED Act either by itself or by any other centre offering alternate dispute resolution services. Therefore, the parties, who are appearing before the Council from time to time for conciliation proceedings under Section 18(2) of MSMED Act, must be given an express notice regarding initiation of arbitration proceedings so that they understand the adjudicatory process which alone will have binding effect upon their rights before it gets initiated. The need for such an express notice was considered by a learned single Judge of this Court in ***Sri Valli Process Vs Micro, Small Enterprises Facilitation Council*** reported in ***2022 SCC OnLine Mad 3537 : (2022) 5 MLJ 489***, the relevant portion of which is quoted hereunder :-



WEB COPY

“23. The complexion or character of MSMED council changes from one capacity to other while following the step by step procedure contemplated under Section 18 of MSMED Act. While exercising power under Section 18(1) of the Act, MSMED council acts as an ordinary authority to receive respective representations of the parties. On the other hand, while acting under Section 18(2) the complexion of the council would change from that of an ordinary authority to that of a conciliator acting under relevant provision of arbitration and conciliation Act. While exercising power under Section 18(3), the complexion of MSMED council changes from that of conciliator to that of an Arbitrator. Therefore, it is incumbent upon the first respondent council to inform the parties by express notice under what capacity, they receive the pleadings of the parties. At least while commencing the arbitration under Section 18(3) of MSMED Act, the first respondent is obliged to record the failure of conciliation proceedings and initiation of an adjudicatory procedure as an Arbitrator. It is obligatory on the part of the first respondent council to inform the parties about the change of its face from that of conciliator to that of an Arbitrator, so that the parties will be made to understand that they are participating in an adjudicatory process, which will result in a binding order having impact on their rights. There is nothing available in the impugned order to show that at what point of time, the first respondent council acquired the character of arbitrator from that of conciliator. The parties appeared to have participated in the proceedings without knowledge whether they are participating in an ordinary reference stage under Section 18(1) or conciliation stage under



W.P. No.30385 of 2017

Section 18(2) or in an adjudicatory stage under Section 18(3). There is nothing available in the impugned order to show valid constitution of arbitral Tribunal and beginning of adjudicatory process with express notice to the parties. Hence, I hold the impugned order cannot be termed as an award and hence liable to be set aside.

13. This Court in ***Ramesh Conductors Private Limited Vs. M & SE Facilitation Council (Micro and Small Enterprises)*** reported in ***(2016) 1 CTC 403*** observed as follows:-

“34. At this juncture, it is pertinent to refer to the provisions relating to arbitration as there is a clear mandate in sub section (3) of Section 18 of the Act to conduct the arbitration proceedings as per the provisions of the arbitration and conciliation Act, 1996.

35. Chapter II to VII in the arbitration and conciliation Act, deals with, arbitration agreement, composition of arbitral tribunal, jurisdiction of arbitral tribunals, conduct of arbitral proceedings, making of arbitral award and termination of proceedings and recourse against arbitral award, respectively.

36. The provisions of Sections 7 to 34 deals with, arbitration agreement, power to refer parties to arbitration where there is an arbitration agreement, interim measures, etc. by Court, Number of



arbitrators, appointment of arbitrators, grounds of challenge, challenge procedure, Failure or impossibility to act, Termination of mandate and substitution of arbitrator, competence of Arbitral Tribunal to rule on its jurisdiction, interim measures ordered by arbitral tribunal. Equal treatment of parties, determination of rules of procedure, place of arbitration, commencement of arbitral proceedings, language, statements of claim and defence, hearings and written proceedings, default of a party, expert appointed by arbitral tribunal Court assistance in taking evidence, Rules applicable to substance of dispute, decision making by panel of Arbitrators, settlement, Form and contents of arbitral award, termination of proceedings, correction and interpretation of award; additional award and application for setting aside arbitral award, respectively.

37. A scrutiny of the Order passed by the first respondent would reveal that no provisions of the above sections of the arbitration and conciliation Act, 1996 have been applied for conducting the arbitration, even though the sub-section (3) of Section 18 has specifically stated that the provisions of the arbitration and conciliation act, shall be applied for conducting the arbitration.

38. A perusal of the Order in the light of the above provisions would clearly reveal that the order was passed in total negation of sub-section (2) & (3) of Section 18, and therefore, it cannot be construed that either an Order was passed under sub-section (2) of



W.P. No.30385 of 2017

Section 18, or an award was passed under Sub-section (3) of Section 18 of the Act.”

14. In ***Union of India vs. The Chairman, Uttar Pradesh (UP), State Micro and Small Enterprises Facilitation Council in W.P.(MD).No.13870 of 2021***, while dealing with similar case, this Court observed as follows:-

“37. If at all, an arbitration to be conducted by the Council, the law is well settled in this regard that, though not strictly, but the procedure of Civil Procedure Code can very well be invoked in arbitration proceedings. The party shall be permitted to file their pleadings, counter pleadings and thereafter issue shall be framed and party shall be given opportunity to let in their evidence both in oral and documentary ways and if any oral evidence is let in, the opposite party can choose to cross-examine. Therefore, the procedure to be adopted in arbitration proceedings, is nothing but almost a replica of the Civil Court proceedings. Of course summarily proceedings should have been conducted in the manner provided under the Arbitration Act. In this case, if we look at the impugned order, nothing has been stated as to how and when such an arbitration has been conducted by involving both the parties in the arbitration proceedings.

38. Merely on the basis of the reference made by the respondents herein who are the petitioners before the Council and merely based on letter dated 17.09.2018 alone the Council has



W.P. No.30385 of 2017

proceeded to conclude the matter and passed an award through the impugned order directing the petitioner to pay the aforesaid sum with interest etc.,

39. Therefore, this Court has no hesitation to hold that absolutely there has been no arbitration proceedings in the manner known to law conducted by the Council and since the conduct of arbitration is a mandatory one under Section 18(3) of the MSME Act and in that case since the Council has failed to conduct arbitration in the manner known to law, the impugned order, though it is styled as an award under Arbitration Act, cannot be treated as an award, therefore, the argument advanced by the respondents that, as against the impugned order or award, the petitioner has to invoke only Section 19 of the MSME Act or Section 34 of the Arbitration Act is liable to be rejected. Accordingly, it is rejected."

15. From the ratios laid down above, it is evident that on failure of conciliation and before initiation of arbitration proceedings, issuance of express notice is mandatory. The said decision is squarely applicable to the facts of the present case. Even a perusal of the order passed by the 1st respondent does not reveal that the above mandatory procedure has been followed. Neither the parties have been put on notice nor there is any indication in the order that the parties had appeared and they have marked



W.P. No.30385 of 2017

documents in support of their case. When there is no express intimation with regard to the petitioner being put on notice, which alone would have given an opportunity to the petitioner to put forth its case by filing the necessary claim statement, as provided for under the Arbitration & Conciliation Act, the act of the 1st respondent in passing the impugned order suffers the vice of illegality and it is perverse, as opportunity was denied to the petitioner. For all intent and purpose, the impugned award cannot be held to be an award in the eye of law, when there is glaring and flagrant violations of the procedural formalities and when the order is perverse and passed without following the principles of natural justice. Therefore, necessarily the impugned order warrants interference at the hands of this Court, as not only there is non-compliance of procedural formalities, but also non-compliance with principles of natural justice.

16. In view of the above, the impugned order is liable to be set aside and the writ petition stands allowed. The matter is remanded to the 1st respondent for fresh consideration. The petitioner is directed to submit a claim statement within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the claim statement the 1st respondent shall conduct the arbitration proceedings either by itself or



W.P. No.30385 of 2017

through a centre offering alternate dispute resolution services by following the provisions of Section 18(3) of MSMED Act read with the provisions of the Arbitration and Conciliation Act and pass fresh award within a period of twelve weeks thereafter. However the deposit of the said amount by the petitioner is subject to the outcome of the orders of the 1st respondent. No costs. Consequently, connected miscellaneous petitions are closed.

23.09.2024

Index : Yes / No
Internet : Yes / No
vsi2

To
1. The Zonal Officer,
The Micro, Small & Medium
Enterprises,
Facilitation Council,
Chennai Region,
Coimbatore Region / General Manager,
District Industries Centre,
Coimbatore.

2. Mr.S.M. Sadhasivam,
Rep. by its Managing Partner,
M/s. Premier Plate Fabrications,
No.355/1-B, Abbas Garden,
Near Luna Nagar,
TVS Nagar,



Thadagam Road,
Coimbatore.

WEB COPY



W.P. No.30385 of 2017

M.DHANDAPANI, J.

vsi2

W.P. No.30385 of 2017

23.09.2024