

M/S.Bagalkot Cement & Industries Ltd vs / on 8 February, 2024

W.P.No.21

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.2170 of 2024
and W.M.P.No.2349 of 2024

M/s.Bagalkot Cement & Industries Ltd.,
(Assignee of Bangalkot Udyog Limited),
Rep. by its Authorized Signatory,
Mr.Suresh Sharma
Stadium House, Block No.1,
6th Floor, Veer Nariman Road,
Church Gate, Mumbai – 400 020.

...

Pet

/vs/

1. The Chairperson,
Micro Small and Medium Enterprises,
Facilitation Council, Coimbatore Region,
Industries Commissioner and Director of
Industries and Commerce,
Guindy, Chennai – 600 032.

2. M/s.Unicon Engineers,
Bharathi Road,
Chinnavedampatty, Ganapathy,
Coimbatore.

...

Respon

Page 1 of 10

<https://www.mhc.tn.gov.in/judis>

W.

Writ Petition is filed under Article 226 of the Constitution

issue a writ of certiorari to call for the records of the first respon

proceedings

MSEFC/CBER/88/2022

dated 27.03.2023

(r

02.11.2023 through registered post) and to quash the same as being illegal and unsustainable in law.

For Petitioner ... Mrs.N.Kavitha Rameshwar

For Respondents ... Mr.B.Manoharan for R2
No appearance for R1

ORDER

This Writ Petition has been filed challenging the proceedings passed by the first respondent in MSEFC/CBER/88/2022 dated 27.03.2023 as illegal and unsustainable in law.

2. Though private notice has been served on the first respondent and the name of the first respondent is printed in the cause list, none appeared on behalf of the first respondent.

<https://www.mhc.tn.gov.in/judis>

3. The petitioner who is aggrieved due to an ex parte Arbitration award passed by the first respondent on 01.03.2016 in respect of a dispute between the petitioner and the second respondent has challenged the same by way of filing a writ petition in W.P.No.16890 of 2016 and the same got disposed on 11.07.2022 with the following observation:

“ .. 6. Therefore, the matter is remanded back to the file of the first respondent and the first respondent is directed to follow the step by step procedure contemplated under Section 18 of the MSMED Act and decide the matter afresh as expeditiously as possible, within the period as mandated by MSMED Act. The first respondent is directed to take up the matter for consideration on 01.08.2022. Both the petitioner and the second respondent are directed to appear before the first respondent on 01.08.2022 at 10.30 a.m.”

4. As per the above direction, fresh arbitration proceedings were held and in which the impugned award dated 27.03.2023 has been passed. The learned counsel for the petitioner submitted that the award has been passed as early as on 27.03.2023 but the copy of the award has been served upon him only on 02.11.2023.

<https://www.mhc.tn.gov.in/judis>

5. Mrs.Kavitha Rameshwar, the learned counsel for the petitioner, submitted that the petitioner is aware of the legal position that the petitioner's only recourse to challenge the award is by way of preferring an application under Section 19 of MSMED Act, 2006 r/w. Section 34 of the Arbitration and Conciliation Act, 1996.

6. The only concern addressed by the learned counsel for the petitioner is that in the award dated 27.03.2023, the element of interest has been awarded at the rate of three times of the bank rate interest on the amounts pertaining to 13 invoices, from 08.10.2007 to 25.06.2008, till the date of realization of dues. The above period concerning the interest is inclusive of the period during which the earlier writ petition was pending before the Court.

7. Section 19 of MSMED Act, 2006 will stipulate that any application challenging the award can be filed under the said provision only on deposit of 75% of the award amount.

<https://www.mhc.tn.gov.in/judis>

8. The petitioner has filed this writ petition as his right to file the application under Section 19 itself is shut due to the unreasonable interest and non-consideration of the period during which the writ petition was pending.

9. The learned counsel for the petitioner submitted that the appellate authority does not have any discretion to waive the condition of depositing 75% of the award amount and it is a condition precedent for admitting any application filed challenging an award; the petitioner has challenged the earlier ex parte award and got a direction for a fresh consideration; but the writ proceedings were pending for nearly seven years and the said period is also included in the period covering the interest; in view of such an arbitrariness, the petitioner is burdened with the huge liability of paying 75% which could come to Crores.

10. Mr.B.Manoharan, the learned counsel for the second respondent, submitted that the appellant's remedy is only under Section 34 of the Arbitration and Conciliation Act, 1996 and that can be availed only by way of depositing 75% of the decretal amount and that the said obligation cannot be <https://www.mhc.tn.gov.in/judis> obviated by taking recourse to the writ jurisdiction under Article 226 & 227 of the Constitution of India and the same is clearly impermissible. Reliance was placed on the decision of the Hon'ble Supreme Court of India held in M/s.India Glycols Limited and Another Vs. Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and others in Civil Appeal No.7491 of 2023 dated 06.11.2023 wherein it is held as under:

“ ... 12. The appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy-five per cent of the decretal amount. This obligation under the statute was sought to be obviated by taking recourse to the jurisdiction under Articles 226/227 of the Constitution. This was clearly impermissible.”

11. There is no quarrel on the point that the petitioner's right to challenge the award lies only under Section 19 of MSMED Act, 2006 r/w. Section 34 of the Arbitration and Conciliation Act, 1996. But the award has been passed without taking into consideration of the ability of the petitioner to even file an application under Section 19 of MSMED Act, 2006, after meeting out a huge financial liability of paying 75% of the award which is inclusive of the interest for the period during which the writ petition was pending.

<https://www.mhc.tn.gov.in/judis>

12. It would have been ideal if both the parties had made due representation before the Court for the early disposal of the writ petition. For the reasons known to the parties or due to the inability on the part of the Court, the writ petition was not disposed immediately and it was kept pending for a period of 7 years and an order came to be passed only on 11.07.2022. Since the first respondent does not consider the impracticalities imposed in the order which would certainly prevent the petitioner from filing any application under Section 19 of MSMED Act, 2006 r/w. Section 34 of the Arbitration and Conciliation Act, 1996 and the appropriate authority also does not have power to relax the mandatory stipulation of depositing 75% of the award amount, the petitioner was forced to come before the Court for seeking orders.

13. Right to challenge the award is a legal right available to a party and hence it should be realistic. By awarding hyper interest and increasing the award amount exponentially will definitely shut the doors to challenge the award. The petitioner is indirectly deprived of his appeal remedy in view of three times of the bank rate of interest imposed on the award amount till the <https://www.mhc.tn.gov.in/judis> date of realization without considering the fact that the writ was pending before this Court or by considering the pendency of the writ proceedings as something offensive. Such cold orders on interest with a view to shut the doors to justice would jolt the fundamental principles of justice.

14. No doubt this writ petition cannot be a substitute for application under Section 19 of MSMED Act, 2006 r/w. Section 34 of the Arbitration and Conciliation Act, 1996. The petitioner shall not be allowed to achieve what he cannot directly achieve by way of filing a writ petition without resorting to the rightful course under Section 19 of MSMED Act, 2006. But at the same time, the avenues to challenge the award which is a legal right should not be shut, in view of the onerous condition of pre-deposit of 75% of the award amount.

15. This Court is completely aware of the fact that it cannot sit as an appellate authority over the award passed by the first respondent. In view of the peculiar circumstances involved in this case and the violation of fundamental principles of reasonableness and fairness, this Court has a <https://www.mhc.tn.gov.in/judis> limited obligation to balance the access to justice, by removing the stumbles. The Court being conscious of the scope of Article 226 of the Constitution of India in challenging the award, I avoid to go into the merits of the award excepting in respect of the imposition of three times of bank rate over the principal amount, covering the period during which the writ was pending. To that limited aspect, I feel the matter can be remitted back to the file of the first respondent to reconsider the interest part and pass an order afresh on interest.

16. Taking into consideration of the peculiar circumstances of the case, the interest part of the award alone is set aside and the matter is remitted back to the file of the first respondent to reconsider the rate of interest and pass fresh orders in respect of interest on the award amount, within a period of four weeks from the date of receipt of a copy of this order.

08.02.2024 Index: Yes Speaking order Neutral Citation : Yes / No Note to Office: Issue order copy by 12.02.2024 bkn <https://www.mhc.tn.gov.in/judis> R.N.MANJULA ,J.

bkn To:

1. The Chairperson, Micro Small and Medium Enterprises, Facilitation Council, Coimbatore Region, Industries Commissioner and Director of Industries and Commerce, Guindy, Chennai – 600 032.

08.02.2024 <https://www.mhc.tn.gov.in/judis>