

Andhra High Court

Ballapur Industries Limited, ... vs Andhra Pradesh Micro, Small ...

THE HONBLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.6690 of 2010

01072014

Ballapur Industries Limited, Chanderpur District, Maharashtra State, rep. by its Authorised Person Mr.D.Mohan GandhiPetitioner

Andhra Pradesh Micro, Small Enterprises Facilitation Council, Hyderabad, rep. by its Chairman, the Commissioner of Industries and another Respondents

Counsel for the Petitioner : Sri L.Venkateshwar Rao Counsel for the Respondents: G.P.for Mines & Geology Sri G.Pedda Babu Sri M.Karuna Sagar <Gist :

>Head Note :

? Cases referred 1 (2012) 6 SCC 345 2 (2010) 5 SCC 44 HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO WRIT PETITION Nos.6690, 6691, 6692 and 7220 of 2010 COMMON ORDER:

All these four Writ Petitions are being disposed of by this common order in view of the common question of law involved in all the cases.

2. Heard the learned counsel for petitioner and the learned counsel for second respondent. None appeared for the first respondent.

3. The petitioner is a public limited company engaged in the business of manufacture of paper and paper products. In the course of its business, the petitioner company was approached in the year 1997 by the second respondent offering to supply optical whitening agent (hereinafter referred to as goods) which is used as raw material in the manufacture of paper and paper products. After negotiations, both the parties agreed for the supply of goods. The petitioner company placed orders on the second respondent for supply of goods and the second respondent supplied the goods to the petitioner between November, 1997 to March, 2001 and raised several bills. One of the terms of the supply was that after supply of the goods, the petitioner company would inspect them and subject them to quality tests. After the quality is confirmed, the petitioner would avail a credit period of 60 days after which it would release the payments to the second respondent. Accordingly, the petitioner company was making payments to the second respondent after satisfying itself of the quality of the

goods supplied by it.

4. While so, the second respondent initiated proceedings in Case Nos.80, 81, 82 and 83 of 2003 on the file of the Andhra Pradesh Industrial Facilitation Council (for short, the Council), the first respondent, claiming that there was a delay in making payments to it by the petitioner company and consequently it is entitled to interest on delayed payments as provided under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short, Act of 1993). The petitioner contested the said case by raising various pleas relating to jurisdiction, limitation and full and final settlement of all its claims against the second respondent. When the cases were pending before the Council, the Parliament enacted Micro, Small Medium Enterprises Development Act, 2006 (for short, MSMED Act) repealing the Act of 1993.

5. Section 18 of the MSMED Act reads as follows: Section 18:- Reference to Micro and Small Enterprises Facilitation Council:- (1) Notwithstanding anything contained in any other law for the time being in force, any part 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 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 to it any institution or centre providing alternate dispute resolution services 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 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.

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

6. Accordingly, the Council, constituted under the MSMED Act, continued with the hearing of the said cases and initiated conciliation proceedings. When the conciliation proceedings failed, the Council itself took up the responsibility of conducting the proceedings under the Arbitration and Conciliation Act, 1996 (for short, Arbitration Act) in accordance with Section 18 of the MSMED Act and passed an award on 07.11.2009 in all the said cases directing the petitioner company to pay the amounts as follows to the second respondent, within two months from the date of that orders.

Sl.No.

Case No. Awarded Amount 1 80/2003 Rs.2,22,775/-

2

81/2003 Rs.1,55,586/-

3

82/2003 Rs.9,54,205/-

4

83/2003 Rs.2,69,096/-

7. After passing of the awards by the Council, the petitioner company addressed a letter to the Council on 21.01.2010 followed by a reminder on 09.02.2010, requesting it to furnish copy of the docket proceedings in the said cases. In response, the Council, by its letter dated 06.03.2010, stated that docket proceedings cannot be furnished as per Section 75 of the Arbitration Act.

8. The case of the petitioner is that under Section 16 of the Arbitration Act, the Arbitral Tribunal shall decide the plea with regard to jurisdiction and only on rejecting such a plea, it shall continue with the proceedings to make an award. Though the petitioner company has taken a specific plea that the Council does not have jurisdiction in as much as it confers jurisdiction of the Courts at Chandrapur, it went ahead with hearing. The Council ought to have decided on the said preliminary objection and then only should have proceeded with the arbitral proceedings. But, without deciding the said preliminary objection, the Council proceeded with the hearing and passed the award. Further, a copy of the award is not signed by any of the Members of the Council, though it consists of Chairman and 4 Members. The petitioner states that though the provisions of the Arbitration Act provides for an application for setting aside the award, since the grounds raised in the present cases are of serious nature which would go to the very root of the matter and hence the application for setting aside the award under the MSMED Act is not a proper remedy. The pre-condition to deposit 75% of the awarded amount under Section 19 of the MSMED Act makes the remedy illusory.

9. The second respondent filed a counter-affidavit stating that the original of the award was passed and signed by all the members of the Council and the copy of the award sent to the parties need not be signed by the members of the Council. The hearing on 20.09.2008 is not only the hearing and the case underwent several adjournments after overruling preliminary objections. With regard to condition of depositing of 75% of the awarded amount, the second respondent stated that similar condition of deposit of amount exists under several statutes as a pre-condition for questioning the orders before higher Courts or tribunals or authorities and the High Courts and the Honble Supreme Court upheld the validity of such provisions. In view of this, the contentions raised by the petitioner for not availing the alternative remedy of filing a petition for setting aside the award is not

tenable and the Writ Petitions are liable to be dismissed.

10. This Court, by interim order dated 25.03.2010, granted interim stay on condition of petitioner depositing 1/4th of the amount awarded with the second respondent.

11. In view of the disposal of all these Writ Petitions on legal points, it is not necessary to advert to various factual contentions raised by the petitioner. The only point that arises for consideration in all these Writ Petitions is whether a Writ Petition under Article 226 of the Constitution of India is maintainable against an award passed by the Council under Section 18 of the MSMED Act.

12. Sub-section (3) of Section 18 of the MSMED Act states that 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 to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration Act, 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.

13. Section 19 of the MSMED Act provides for filing an application for setting aside decree, award or order and it reads as follows.

19. Application for setting aside decree, award or order:- No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court.

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose.

14. Sub-section (4) of Section 2 of the Arbitration Act states that Part I of that Act shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of that Part are inconsistent with that other enactment or with any rules made thereunder.

15. Hence, a conjoining reading of Sections 18 and 19 of the MSMED Act and sub-section (4) of Section 2 of the Arbitration Act makes it clear that Part I of the provisions of the Arbitration Act are applicable to every arbitration under any other enactment. In the Arbitration Act, the grounds for challenge in Section 12, the challenge of the procedure in Section 13, the competence of arbitral tribunal to rule on its jurisdiction in Section 16, conduct of arbitral proceedings in Chapter V, making of arbitral award and termination of proceedings in Chapter VI, recourse against arbitral

award in Chapter VII and finality and enforcement of arbitral awards in Chapter VIII are contained in Part I. Hence, if the petitioner has any grievance against the arbitral award, the only remedy that is available to it is under Section 34 of the Arbitration Act. The petitioner is aware of this remedy, but in view of the pre-condition of deposit of 75% of the awarded amount as contained in Section 19 of the MSMED Act, the petitioner, in order to avoid the same, filed these Writ Petitions under Article 226 of the Constitution of India.

16. As rightly contented by the learned counsel for the second respondent, the Honble Supreme Court in *Goodyear India Ltd. V. Norton Intech Rubbers (P) Ltd.* held that the Court has no discretion to either waive or reduce the amount of 75% of award as a pre-deposit for filing of application/appeal under the MSMED Act. The Honble Supreme Court in *Modern Industries V. SAIL* also held in the context of the Act of 1993 that though the Act of 1993 provides a statutory remedy of appeal against the award, the buyer in that case availing the extraordinary jurisdiction under Article 226 of the Constitution bypassing statutory remedy was held to be not justified.

17. In these cases, the petitioner ought to have availed the remedy of appeal under the Arbitration Act, if the petitioner had any grievance with regard to the awards passed against it by the Council. But the petitioner filed the present Writ Petitions on the plea that the grounds raised in the Writ Petitions challenging the award go to the root of the matter. Even if the grounds raised against the award go to the root of the matter, the provisions of the Arbitration Act are self contained and deal with all situations in relation to arbitration proceedings. When a self contained statute is available in a particular situation as an alternate remedy, invocation of extraordinary jurisdiction of this Court cannot be encouraged and accordingly the present Writ Petitions are not maintainable.

18. In view of this, these Writ Petitions challenging the awards of the Council passed in Case Nos.80, 81, 82 and 83 of 2003, dated 07.11.2009 are dismissed. However, the petitioner is given liberty to avail the remedy of appeal, if it is so advised, within a period of three months from the date of receipt of a copy of this order. No costs. Miscellaneous Petitions pending, if any in these Writ Petitions, shall stand closed.

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A.RAMALINGESWARA RAO, J Date:01.07.2014