



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 25th OF SEPTEMBER, 2024

WRIT PETITION No. 6206 of 2024

*JSW STEEL LIMITED VIJAYNAGAR WORKS THROUGH ITS
GENERAL MANAGER ASHISH KUMAR NAIR AND OTHERS*

Versus

MADHYAPRADESH MICRO SMALL ENTERPRISES AND OTHERS

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Appearance:

*Shri Naman Nagrath - Senior Advocate with Shri Jubin Prasad - Advocate, for
petitioners.*

*Shri Vikram Singh - Advocate, Shri Mukesh Agrawal - Advocate and Shri Ayush
Gupta - Advocate, for respondent No.2.*

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ORDER

Petitioners have filed this petition under Article 226 of the Constitution of India challenging award dated 24.01.2024 passed under M.S.M.E.D. Act, 2006 contained in Annexure-P/5.

2. Learned Senior Counsel appearing for petitioners assailed the award on grounds that provisions of Section 18(2) and 18(3) of M.S.M.E.D. has not been complied with. Award is contrary to provisions of M.S.M.E.D. Act and no opportunity of hearing was provided to petitioners. It is submitted that award is passed violating fundamental rights of natural justice. No opportunity of hearing was provided. Conciliation was done by Council and failure of conciliation was not recorded. Award was passed on the same day. In view of aforesaid circumstances, impugned award be set aside.



3. Counsel appearing for respondent No.2 opposed the prayer and submitted that petitioners are having alternate remedy to prefer reference/appeal under M.S.M.E.D. Act. Statutory provision for depositing 75% of awarded amount is also to be complied with. Writ petition is filed to avoid statutory deposit of 75% of award amount. Petition may be dismissed. Counsel for respondent No.2 argued that petitioners ought to have filed a statutory appeal under the provisions of Act, wherein pre-deposit of 75% of the amount is required. It is submitted that Supreme Court in case of *India Glycols Limited and Another vs Micro and Small Enterprises Facilitation Council, Medchal - Malkajgiri and Others*, reported in *2023 SCC OnLine SC 1852* has held that writ petition may not be entertained by High Courts and parties be directed to prefer an appeal after making pre-deposits.

4. Heard the counsel for the parties.

5. Carefully perused the judgment passed by Apex Court in case of *India Glycols (supra)*. In said case, appropriate opportunity of hearing was provided to the parties. They were heard and order was passed. Question of violation of natural justice was not involved. In said case, it was stated that there is non-compliance of provisions of Section 18(2) and 18(3) of M.S.M.E.D. Act. Said argument was upheld. Petitioners also pray for similar relief.

6. Perused records of case.

7. It is found that case was fixed for conciliation between the parties, but no Service Provider or Mediator were appointed for conciliation. Conciliation proceedings never began in true sprits of the Act. Parties cannot



be left upon themselves to do conciliation. M.S.M.E.D. is directed to see it that when claim is filed and notices are issued to non-applicants/respondents. Before proceeding further conciliation is to be held by a neutral person. Said neutral person of service provider is to be appointed by Council. Thereafter, if conciliation proceeding fails then written report be submitted by said Service Provider or Mediator regarding failure of conciliation and Facilitation Council may enter into arbitration itself or appoint an Arbitrator for settling the disputes and passing of award.

8. Learned Senior Advocate appearing for the petitioners has vehemently argued that no opportunity of hearing was given to petitioners, therefore, judgment in case of India Glycols Limited (Supra) could not be applied.

9. Perused the judgment passed by the Apex Court. In said judgment, it was held that proceedings before M.S.M.E.D. Act, 2006 under section 18(3) shall be governed by Arbitration and Conciliation Act, 1996. Against an award, aggrieved parties have remedy under section 34 of the Arbitration and Conciliation Act, 1996 and 75% of the decretal amount is to be deposited as per section 19 of M.S.M.E.D. Act, 2006. Application for setting aside the award can only be entertained upon depositing of 75% of the amount. Apex Court affirmed the judgment of Division Bench by holding that petition under Articles 226 and 227 of the Constitution of India was not maintainable. No order could have been passed on merits of the case.

10. In this case, it is found that claim of Rs.13,69,705/- along with interest of Rs.5,93,407/- was made by claimant M/s Suony Fiber Glass India



Private India Limited against petitioners i.e. Ms. JSW Steel Limited. Notices were issued on 02.08.2023 and conciliation proposal was asked from parties within period of 15 days and also to file reply and balance sheet. Case was listed on 19.10.2023 and further 15 days time was granted but neither proposal for conciliation nor reply was filed. Right to file reply was closed on 05.01.2024 and on same day, award was passed.

11. Learned Senior Advocate appearing for petitioners has a point that if rights of natural justice are violated then Court can entertain writ petition. Apex Court in case of *India Glycols Limited (supra)* has held that writ petition against award is not maintainable and parties has to resort the proceedings under section 34 of the Arbitration and Conciliation Act. In said case, parties were given sufficient opportunity of hearing and parties have filed their claims, counter claims and reply and thereafter, award has been passed. In cases where no hearing is given to the party and award is passed, such awards cannot be said to be passed on merits of the case and there may be travesty of justice if party has to bear burden of pre-deposit for filing an application and objections to award under section 34 of Act, 1996. In such cases or where there is want of jurisdiction, petition under Article 226 of the Constitution of India is maintainable against award. High Court may exercise its discretion with extreme caution in selective cases. Now it is to be seen in this case whether rights of natural justice of petitioner has been violated or not.

12. On going through the aforesaid facts, it cannot be said that rights of natural justice of petitioner has been violated. Petitioner was given sufficient



opportunity and time to file its reply. Notice was issued on 02.08.2023 and petitioner was asked to file balance sheet and reply. Neither balance sheet was produced nor reply was filed and again 15 days time was granted and right to file reply was closed on 05.01.2024. From aforesaid facts, it is found that petitioner was having more than 78 days time between 19.10.2023 to 05.01.2024 to prefer reply. 78 days time is sufficient time for petitioner to produce documents and file reply. If petitioners have not filed reply within said period then Facilitation Council has rightly closed the rights of petitioners. Said closing of rights cannot be said to be violation of rights of natural justice.

13. Considering aforesaid facts and circumstances of the case, it is clear that rights of natural justice of petitioners has not been violated. Petitioners themselves chose not to file reply and delay the process by seeking more time for filing reply. In these circumstances, Facilitation Council has rightly exercised its powers to close the rights. No interference is called for. Accordingly, writ petition is *dismissed*.

14. Petitioners are at liberty to file an application and objection under section 34 of the Arbitration and Conciliation Act, 1996.

15. No opinion is expressed by this Court on merits of the case.

(VISHAL DHAGAT)
JUDGE