

(2007) 02 MAD CK 0041

In the Madras High Court

Case No : CRP (PD) No. 2785 of 2003 and C.M.P. No. 21036 of 2003

M/s. Rajan and Mohan Enterprises

APPELLANT

Vs

South India Corporation (Agencies) Ltd., M/s. Indrad Auto
Components Division and The Regional Industry Facilitation
Council Chennai Region, Arbitrator

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Arbitration Act, 1940 — Section 34
Constitution of India, 1950 — Article 227
Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings
Act, 1993 — Section 10, 2(b)(i)(b), 7

Citation : (2007) 02 MAD CK 0041

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : R. Gandhi, S.C. for Mr. V.P. Sengottuvel, for the Appellant;
Shivakumar for R.1, for the Respondent

Judgement

S. Ashok Kumar, J.—As against the filing of the O.P.No:610 of 2003 on the file of the Principal Judge, City Civil Court, Chennai, by the respondent herein challenging the order passed by the Industry Facilitation Council constituted under "The Interest on delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, directing it to pay a sum of Rs. 4,19,131/=, the revision petitioner has preferred this Revision. Learned Senior Counsel appearing for the revision petitioner contended that as per Section 6 of the amended in 1998 by Act 23 of 1998, any party to the dispute may make a reference to the Industry Facilitation Council. As per Section 7 of the said Act, "no appeal against any decree, award or other order shall be entertained by any court or other authority unless the appellant (not being a supplier) has deposited with it seventy five percent of the amount in terms of the decree, award or, as the case may be, other order in the manner directed by such court, or as the case may be, such authority".

2. Learned Senior Counsel placing reliance on Section 7 of the said Act, contended that only to avoid payment of 75% of the amount in terms of the decree or award, the respondent has invoked Section 34 of the Arbitration Act, which is nothing but a delaying tactics. The Original Petition filed by the respondent challenging the order of the Council is not maintainable and it is an abuse of process of the court.

3. Learned Senior Counsel also referred to the findings recorded by the Industry Facilitation Council on 20.11.2002, which reads as follows:-

The Legal Officer of the respondent company has left the place without any intimation to the council even though he signed in the Register. This was viewed with displeasure by the Council. The case was adjourned for hearing in the next meeting.

4. It is also contended that by order dated 9.5.2003, the said Council has passed the following order on considering the case of either parties:-

Details of the case:-

The petitioner has supplied A/L Wiper Bracket to the respondent to the tune of Rs. 4,19,131/=. Since the respondent has not made any payment, the petitioner appealed the Council for early settlement together with interest.

The Legal Officer of the respondent company has left the place without any intimation to the council even though he signed in the Register. This was viewed with displeasure by the Council. The case was adjourned for hearing in the next meeting.

Judgment by the Chairman, industry Facilitation Council:-

The petitioner was present for the Council Meeting. The counsel for the respondent appeared and argued, but he was not able to show any evidence to the effect that any objection notice for the defects was issued by the respondent within 30 days from the day of delivery of goods, as provided in Section 2(b) (i) (b) of the Act. Therefore, it is hereby ordered that the respondent should pay the principal amount of Rs. 4,19,131/= with interest within 30 days from the date of receipt of this order, failing which the petitioner is at liberty to file Execution Petition before the appropriate Civil Court.

5. From the above order made by the Industry Facilitation Council, it is clear that the behaviour by the Law Officer of the respondent-company and its counsel would show that they do not have any respect for the Council and they do not have the real intention to pay the money. But, they want to dodge and that is why they instead of filing an appeal against the order have invoked Section 34 of the Arbitration Act and filed the Original Petition before the City Civil Court, Chennai.

6. Further, it is not in dispute that as seen from Section 10 of the said Act, the Act being a special enactment, the provisions of the said Act have overriding effect notwithstanding anything inconsistent therewith contained in any other law

for the time being in force.

7. Learned counsel for the respondent by placing reliance on the decision of the Andhra Pradesh High Court in *Superintending Engineer NSRC V. R.K. Engineering*, reported in Vol. 51 SCL 2004 345 contended that though the order could be challenged under Art.227 by this Court, yet, the impugned order passed by a quasi judicial body, being cryptic in nature without analysing the merits and demerits of the claim of either side, the respondent has rightly invoked Section 34 of the Arbitration Act to challenge the said order.

8. In this context, the revision petitioner has also enclosed nearly 15 documents along with the Revision Petition to substantiate its case. I However, without going into the merits of the case, it is made clear that in view of the legal position as stated earlier, no appeal is maintainable u/s 7 of the said Act, unless the appellant deposits seventy five per cent of the amount in terms of the award, the respondent is directed to deposit 75% of the amount ordered by the Council to prefer an appeal before the competent authority as provided in Section 7 of the said Act, if he is so advised. Consequently, the trial court is directed to reject the Original Petition filed by the respondent herein. The Civil Revision Petition is allowed with the above direction. Consequently, connected CMP is closed. No costs.