IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

WRIT PETITION No. 23510 of 2023

BETWEEN:-

M/S KAMCO CHEW FOOD PVT. LTD. THROUGH AUTHORIZED PERSON MR. KARTAR SINGH S/O C/O SHRI SHRI MULCHAND PAHUMAL MOTYANI, AGED ABOUT 43 YEARS, OCCUPATION: BUSINESS R/O B-220 GULMOHAR COMPLEX SCHEME NO. 136 INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SHANTANU SHARMA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH FACILITATION COUNCIL MADHYA PRADESH MICRO AND SMALL ENTERPRISES MSME 4TH FLOOR DIRECTORATE OF INDUSTRIES VINDHYACHAL BHAWAN BHOPAL (MADHYA PRADESH)**

2. **M/S PACK O PACK THROUGH AUTHORIZED REPRESENTATIVE 45, KESHAR BAGH ROAD INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY MS. HARSHLAT SONI – G.A./P.L. FOR RESPONDENT NO.1 AND SHRI RADHE SHYAM YADAV – ADVOCATE FOR RESPONDENT NO.2)

……

Reserved on : 26.02.2024

Pronounced on : 15.03.2024

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….....

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court passed the following:

ORDER

Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 18.08.2023, passed by the Facilitation Council (hereinafter referred to as 'the Council') under the Micro, Small and Medium Enterprises Development Act, 2006 (in short 'MSME Act') in Case No.M.S.E.F.C./1905/2023, whereby the final award has been passed by the Facilitation Council.

3] The aforesaid award has been challenged by the petitioner only on the ground of not providing the opportunity of proper hearing, as according to the petitioner, the notice was issued by the Council on 16.06.2023, which was served on the petitioner only on *30.06.2023*.

4] Shri Shantanu Sharma, leaned counsel has submitted that in the notice dated 16.06.2023, which was served on the petitioner on 30.06.2023, it was mentioned that the petitioner had 15 days' time to file his reply, however, before the due date i.e. ***15.07.2023***, another notice was issued to the petitioner on 27.06.2023, via email informing that the date of hearing is 07.07.2023, failing which ex-parte proceedings shall be initiated

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against the petitioner. However, since the petitioner was under the impression that he has already been given 15 days' time vide notice dated 16.06.2023, which was received by him on 30.06.2023, the petitioner did not file any reply of the notice issued to him on 27.06.2023, although, the petitioner's counsel did appear before the Facilitation Council on 07.07.2023. Shri Sharma has also submitted that the Council has not reflected upon any submissions having made by the counsel for the petitioner, despite the fact that the counsel for the petitioner had sought time from the Council to file reply.

5] **Shri Sharma** has also submitted that it was incumbent upon the Facilitation Council to first initiate the mediation process as provided under Section 18(2) of the MSME Act, however, no such process was initiated.

6] In support of his submissions that alternative remedy is no bar in entertaining the writ petition where the violation of principles of natural justice has been alleged, Shri Sharma has also referred to the decision rendered by the Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others** reported as **(1998) 8 SCC 1**. Thus, it is submitted that the impugned order be set aside and the matter may be remanded back to the Facilitation Council, to be decided after the reply is filed by the petitioner, in accordance with law.

7] On the other hand, counsel appearing for the respondent

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No.2 Shri Radhe Shyam Yadav has opposed the prayer and it is submitted that no case for interference is made out as the petitioner has an efficacious alternative statutory remedy available in the form of Section 19 of the MSME Act. Shri Yadav has also submitted that the petitioner was served the notice, which was sent to him through email and despite the petitioner being represented by its counsel before the Facilitation Council, no reply was filed and even in the writ petition, there is not even a reference as to what could have been the defence of the petitioner had he been given adequate opportunity of filing the reply.

8] Shri Yadav has drawn the attention of this Court to the impugned order dated 18.08.2023 in which the Council has also noted that the petitioner was given notice by the respondent No.2 on 01.05.2023, 15.05.2023 and 31.05.2023, regarding its dues, however, no reply was sent by the petitioner of those notices. Counsel has submitted that in such circumstances, when the petitioner has no defence at all, it is only to buy some time from this Court that this petition has been filed, which is misconceived.

9] In support of his submissions, Shri Yadav has also relied upon the decisions rendered by the Supreme Court as also this Court in the cases of **Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd. (Unit 2) & Anr**. reported as **AIR 2022 SC 5545**; **Mahindra and Mahindra Financial Services Ltd. Vs. Niazmuddin** reported as **AIR 2022 SC 5570**;

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M/s. India Glycols Limited and another Vs. Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and others reported as **AIR 2024 SC 285**; **Gannon Dunkerley and Co. Limited Vs. Micro and Small Enterprises Facilitation Council and Anr.** passed in **W.P. No.30511 of 2023 dated 09.01.2024**; and **M/s. GRV Biscuits Private Limited Vs. Madhya Pradesh Micro and Small Enterprises Facilitation Council and Ors**. passed in **W.P. No.21155 of 2022 dated 16.09.2022** regarding maintainability of the writ petition in a case arising out of the order/award passed by the Facilitation Council. Counsel has also submitted that earlier also the petitioner had filed **W.P. No.1010 of 2024** in respect of some other case arising out of the proceedings of the Facilitation Council under the MSME Act, in which also the petition was dismissed as withdrawn vide order dated **16.02.2024**.

10] Heard counsel for the parties and perused the record.

11] From the record, it is found that the petitioner was served with the notice on 30.06.2023, which was issued by the Facilitation Council on 16.06.2023,, which is demonstrated by the petitioner by the postal certificate and it is also not denied that the petitioner was served with a notice via email on 27.06.2023, in which the date of hearing was mentioned as 07.07.2023. Thus, if the notice is said to be served on the petitioner on 30.06.2023, he was required to submit his reply within 15 days' time i.e., on or before 15.07.2023. Contention of

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the petitioner that despite his counsel appeared before the Facilitation Council on 07.07.2023, the Council did not accept his request to give him some time to file reply, which is also reflected from the order dated 07.07.2023 wherein only the name of the petitioner's counsel is mentioned and it is not even mentioned as to what was his submission on the said date.

12] From the impugned order, it is found that the Facilitation Council has also noted that the petitioner was issued notice on 16.06.2023, however, he has failed to submit any reply, hence he was also issued a notice via email on 27.06.2023, and the matter was fixed for 07.07.2023, on which date both the parties were present. It is also found that in the entire petition, there is not a whisper by the petitioner that had he been given due opportunity of filing reply, what would have been his reply, which would have made difference in the final outcome of the case.

13] In such circumstances, even assuming for the sake of argument that the petitioner was not given proper opportunity of filing reply, he cannot claim the same as a matter of right, if he is not able to demonstrate as to what would have been his reply, had he been given the proper opportunity.

14] In this regard reference may be had to the various decisions rendered by the Supreme Court. In the case of ***Nirma Industries Ltd. v. SEBI*, (2013) 8 SCC 20,** it is held as under**:-**

> **"30.** In *B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , having defined the meaning of "civil consequences", this Court reiterated the principle that the

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Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished to the employee. It is only if the Court or Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. In other words, the Court reiterated that the person challenging the order on the basis that it is causing civil consequences would have to prove the prejudice that has been caused by the non-grant of opportunity of hearing. In the present case, we must hasten to add that, in the letter dated 4-5-2006, the appellants have not made a request for being granted an opportunity of personal hearing. Therefore, the ground with regard to the breach of rules of natural justice clearly seems to be an afterthought.

(Emphasis Supplied)

15] The Supreme Court in the case of ***State of U.P. v. Sudhir Kumar Singh*, (2021) 19 SCC 706** has held as under:-

"**42.** An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite

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> inference of likelihood of prejudice flowing from the non-observance of natural justice.
>
> (Emphasis Supplied)

16] The Supreme Court in the case **of *Dharampal Satyapal Ltd. v. CCE*, (2015) 8 SCC 519** has held as under:-

> **"40.** In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "*prejudice*". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing."
>
> (Emphasis Supplied)

17] Considering the facts of the case in hand on the anvil of the aforesaid dictum of the Supreme Court, it is found that the petitioner has failed miserably to demonstrate any prejudice being caused to him by preponement of the date of hearing. It is also found that the petitioner's Advocate had appeared on 07.07.2023, and it is apparent that he did not file any application that he had already been served notice on 30.06.2023, and the 15 days' time from 30.06.2023 would be on 15.07.2023, hence, he should be granted some more time to file reply, but there is nothing of this sort placed on record by the counsel for the petitioner.

18] This Court is of the considered opinion that mere contending that it was not afforded proper opportunity of hearing

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would not suffice if the petitioner is silent as to what would have been its reply/defence had an opportunity to file the reply been given to it, which would have shown bona fides of the petitioner to seriously contest the matter. Thus, no case for interference is made out.

19] So far as the decisions relied upon by the counsel for the respondent No.2 regarding maintainability of the petition are concerned, this Court has not reflected upon the same for the reason that this petition has been decided on the touchstone of the principles of natural justice and it is found that they have not been violated in the facts and circumstances of the case.

20] Accordingly, petition being devoid of merits, is hereby **dismissed**, however, with liberty reserved to the petitioner to challenge the final ward, in accordance with law.

21] Needless to say, the time spent by the petitioner in prosecuting this petition, shall be excluded from the period of limitation.

(SUBODH ABHYANKAR)
JUDGE

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