



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2015

CORAM:

THE HON'BLE MR.JUSTICE T.MATHIVANAN

CMA(MD)No.1095 of 2015

and

M.P.(MD)No.1 of 2015

M/s.Palanivel Match Industries,
Old No.83, New No.417, Kamaraj Road,
Sivakasi, Virudhunagar District
through its Partner Mrs.R.Madana

: Appellant/Petitioner

Vs.

1.The Joint Director,
The Employees' State Insurance Corporation,
Sub Regional Office,
No.4th Main Road,
K.K.Nagar, Madurai-20.

2.The Recovery Officer,
The Employees' State Insurance Corporation,
Sub Regional Office,
No.4th Main Road,
K.K.Nagar, Madurai-20.

: Respondents/Respondents

This Civil Miscellaneous Appeal is filed under section 82 of the Employees' State Insurance Act, 1948 against the judgment and decree, dated 10.11.2014 and made in ESIOP No.39 of 2006 on the file of the Employees' State Insurance Court cum Labour Court, Madurai.

For appellant : Mr.P.Chandra Bose
For respondents : Mr.K.C.Ramalingam

JUDGMENT

This Memorandum of Civil Miscellaneous Appeal has been directed as against the fair and decreetal order, dated 10.11.2014 and made in the original petition in ESIOP No.39 of 2006 on the file of the ESI Court (Labour Court), Madurai, dismissing the petition on the ground that the appellant had not shown any valid and acceptable objection, touching the validity of the impugned order, dated 23.11.2005 (Ex.P2) passed under section 45A of the ESI Act by the respondents Corporation.

2. Heard Mr.P.Chandra Bose, learned counsel appearing for the appellant and Mr.K.C.Ramalingam, learned counsel appearing for the respondents.



3. What it transpires from the records is that the appellant viz., M/s. Palanivel Match Industries at Sivakasi is a partnership firm registered under the Factories Act and Rules made thereunder, represented by its partner one Mrs. R. Madana.

4. The appellant firm has been indulging match works at Sivakasi. That on 21.10.2005, the appellant firm had received a notice under Form C-18 from the respondents Corporation demanding contribution for the period from July 2004 to March 2005 quantifying at Rs. 74,806/- at ad hoc basis and the hearing of the appellant was fixed on 15.11.2005.

5. According to the appellant, their representative had attended the hearing and requested the first respondent viz., the Joint Director of the Employees' State Insurance Corporation to grant time for remitting the actual contribution, but the Assistant Director of ESI Corporation had refused to grant time as requested by the representative of the appellant.

6. It is the specific contention of the appellant that for the period from July 2004 to March 2005, they had to remit the actual contribution of Rs. 13,362/- and not Rs. 74,806/- as claimed by the ESI Corporation, but the Assistant Director of ESI without taking any effort to assess the actual contribution at the personal hearing, had simply confirmed the C-18 notice and passed a non-speaking order on 23.11.2005 without any basis and materials.

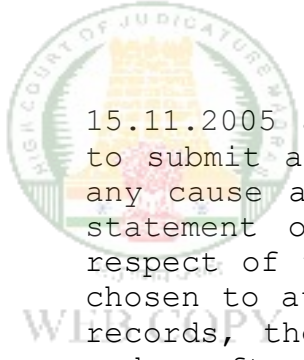
7. On the basis of the order, dated 23.11.2005 passed by the Assistant Director of ESI Corporation under section 45A of the Act, the first respondent had issued a recovery notice in Form C-19, dated 14.02.2006 and on that basis, the 2nd respondent, being the Recovery Officer had issued a recovery notice, dated 17.03.2006. Under these circumstances, the appellant had filed a petition in ESIOP No. 39 of 2006 on the file of the ESI Court (Labour Court), Madurai under section 75(1) (a) (g) of the Employees' State Insurance Act, 1948, challenging the order of the first respondent, dated 23.11.2005, which was made under section 45A of the ESI Act.

8. The respondents 1 and 2 had contested the claim of the appellants. After hearing both sides, the learned ESI Judge had proceeded to dismiss that petition on 10.11.2014 as afore stated.

9. Mr. P. Chandra Bose, learned counsel appearing for the appellant has mainly projected his argument on the ground that the appellant was not given a fair opportunity of being heard and that the Assistant Director of ESI Corporation had proceeded to pass the impugned order mechanically, which appears to be perverse and non speaking one.

10. This has been admitted by the respondents in their objection. They had specifically contended that since, the appellant firm had failed to pay the contribution for the period from July 2004 to March 2005, a Form C-18 notice was issued on 21.10.2005 to show cause within 15 days as to why the contribution should not be recovered from the appellant.

11. They have also contended that in the said show cause notice, dated 21.10.2005, the appellant was offered a personal hearing on



15.11.2005 and that they did not attend the personal hearing and failed to submit any written statement. Since, the appellant had neither shown any cause against the assessment of the contribution, nor submitted any statement on writing, furnishing the contribution of the statement in respect of the wages paid to the labourers as per the rules and not even chosen to attend the personal hearing and purposely avoided production of records, there was no other go for the respondents excepting to pass an order after invoking the provisions of section 45A of the ESI Act and thereby, claimed the contribution quantifying to the extent of Rs.75,806/- for the period from 01.07.2004 to 31.03.2005.

12.This court, considering the submissions made by both the learned counsels, finds that it may not be necessary to delve deep in the facts of the case. Because, the main contention of the appellant is that he was not given a fair opportunity of being heard and they have also suggested that the matter might be remitted back to the Assistant Director of ESI Corporation for fresh disposal after giving reasonable opportunity of being heard to the appellant.

13.The first proviso, which seems to be added by Act 29 of 1989 with effect from 20.10.1989 to section 45A provides that no such order shall be passed by the Corporation unless the principal or immediate employer of the person in-charge of the factory or establishment has been given a reasonable opportunity of being heard.

14.The Hon'ble Apex Court in Bharat Heavy Electricals Limited vs. ESI Corporation [AIR 2008 SC 1449 : (2008)3 SCC 247] has observed that:-

"In the proceedings initiated under section 45-A, an immediate employer or principal employer may also show that they are not liable to deposit any contribution on behalf of the employees as the establishment in question did not come within the purview thereof. The purpose of the proceedings, both under the Employees' State Insurance Act, and also the Employees Provident Act is to determine the amount due from any employer in respect of the employee under the statutory schemes. Both the Acts envisage compliance of principles of natural justice.

15.In so far as the given case on hand is concerned, the paramount consideration is to upkeep the principles of natural justice. The respondents had also admitted in their defence that since the appellant had failed to attend the personal hearing, the impugned, dated 23.11.2005 happened to be passed under section 45A of the ESI Act.

16.In this connection, Mr.K.C.Ramalingam, learned counsel appearing for the respondents has adverted to that the appellant despite the receipt of notice, dated 21.10.2005 (Form C-18) to show cause within 15 days as to why the contribution should not be recovered from them, they had in fact abruptly failed to show any cause and even though, they were afforded a personal hearing on 15.11.2005, they had not chosen to attend the personal hearing and failed to submit any written statement.



17. He has also maintained that under the above circumstances, the Assistant Director of ESI Corporation had proceeded to pass the impugned order under section 45A of the ESI Act, 1948 on 23.11.2005 in exercise of powers delegated under the ESI Act and accordingly, demanded the contribution, totalling Rs.74,806/- [Rupees Seventy Four thousand eight hundred and eight only] for the period from July 2004 to March 2005, which was finally determined and since, the appellant, being the Principal employer was ordered to pay the above said amount within the period of 15 days from the date of the said order I.e., on or before 25.11.2005

18. Mr.K.C.Ramalingam, the learned counsel appearing for the respondents has justified the impugned order, dated 23.11.2005.

19. This court has struck down a balance between the submissions of both the learned counsels and perused the grounds of civil miscellaneous appeal.

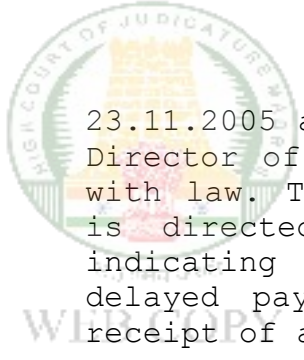
20. Mr.P.Chandra Bose, while countering the arguments advanced by Mr.K.C.Ramalingam, has, in support of his contention, made reference to the decision of the Hon'ble Apex Court in 1995-II.L.L.N.667 (Prestolite (India) Limited vs. Regional Director, Employees' State Insurance Corporation and another. In this case, the Hon'ble Apex Court has observed as under:-

"..Even if the regulations have prescribed general guidelines and the upper limits at which the imposition of damages can be made, it cannot be contended that in no case the mitigating circumstances can be taken into consideration by the adjudicating authority in finally deciding the matter and it is bound to act mechanically in applying the uppermost limit of the table. In the instant case, it appears to us that the order has been passed without indicating any reason whatsoever as to why grounds for delayed payment were not to be accepted. There is no indication as to why the imposition of damages at the rate specified in the order was required to be made. Simply because the appellant did not appear in person and produce materials to support the objections, the employer's case could not be discarded in limine.....

21. In the light of the observation made in the above cited decision by Hon'ble Apex court, this court finds that as submitted by Mr.P.Chandra Bose, the learned counsel appearing for the appellant, a fair opportunity of being heard was not given to the appellant.

22. Hence, this court finds that to meet the ends of justice, the impugned order, dated 10.11.2014 passed by the ESI Court, Madurai as well as the order, dated 23.11.2005 passed by the Assistant Director of Employees' State Insurance Corporation, Madurai may be set aside and the matter may be remitted back to the Assistant Director of the ESI Corporation, Madurai, for disposing the same afresh so as to enable them to put forth their respective contentions.

23. Accordingly, the order of the ESI court, dated 10.11.2014 and made in ESIOP No.39 of 2006 as well as the order passed by the Assistant Director of Employees' State Insurance Corporation, Madurai, dated



23.11.2005 are set aside and the matter is remitted back to the Assistant Director of State Employees Corporation for fresh disposal in accordance with law. The Assistant Director of State Employees Corporation, Madurai is directed to dispose of the representation of the appellant by indicating the reasons after taking into consideration the grounds for delayed payment within the period of three months from the date of receipt of a copy of this order.

24. With the above observations, this civil revision is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar.

To

1 The ESI Judge,
Employees State Insurance Corporation Court,
(Labour Court), Madurai.

2 The Joint Director,
The Employees State Insurance Corporation,
Sub Regional Office,
No.4th Main Road,
K.K.Nagar, Madurai-20.

3 The Recovery Officer,
The Employees State Insurance Corporation,
Sub Regional Office,
No.4th Main Road,
K.K.Nagar, Madurai-20.

+1CC to M/S.K.C.Ramalingam, Advocate, SR.No. 65775

CMA(MD)No.1095 of 2015

Date :16.11.2015

AM/GSV.PM/30.03.2016/5P/5C