

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.193 & 194 of 2011
and M.P.Nos.1 & 1 of 2011 and
CMP Nos.9648 & 9649 of 2017

1.M/s.Hotel Lakshmi (K.R.R. Group)
No.26, Chennai Salai,
Tharapadavedu, Katpadi,
Vellore – 7.

2.K.R.Ravi

... Petitioners in both CRPs

Vs.

1. Employees' State Insurance
Regional Officer (Tamil Nadu)
by its Regional Director,
143 Sterling Road,
Chennai – 600 034.

2. Recovery Officer having his
office at No.143, Sterling Road,
Chennai – 34.

3.Velu

4.Sugumar

5.Jagan

6.Vairavan

7.Raju

8.Renu

9.Venkatesh

... Respondents in both CRPs

COMMON PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the orders of the Principal Labour Court, Vellore dated 21.12.2010 in unnumbered I.A. In

ESIOP Nos.1 & 2 of 2009 and implead the proposed respondents as party respondents in ESIOP Nos.1 & 2 of 2009.

For Petitioner : Mr.Anand Gopalan
in both CRPs

For Respondent : Mr.G.Bharadwaj
in both CRPs for R1 & R2

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the orders of the Principal Labour Court, Vellore dated 21.12.2010 in unnumbered I.A. In ESIOP Nos.1 & 2 of 2009 and implead the proposed respondents as party respondents in EIOP Nos.1 & 2 of 2009.

2. The issues and parties in both the CRPs are one and the same and therefore both the CRPs are disposed of by this common order.

3. The petitioners filed ESIOP Nos.1 & 2 of 2009 on the file of Labour Court, Vellore under Section 75 (1) r/w Section 76 & 77 of of ESI Act, 1942. According to the petitioners, they have not employed more than eight persons at any point of time. The first respondent issued notice under Section 45 (A) of the Act calling

upon the petitioners to pay Rs.1,43,536/- and Rs.42,900/- respectively being their contribution. According to the first respondent, the petitioners have employed twenty persons. The respondents 1 & 2 filed counter denying the averments made in the affidavit. Trial commenced and the petitioner was examined PW2 and cross examined in part. When the case was posted for recording of further evidence of the petitioner, the petitioner filed application to implead the proposed parties 1 to 7 as respondents in ESI OP Nos.1 and 2 of 2009. According to the petitioners, they have employed only seven persons and as per the judgment of the Hon'ble Apex Court reported in **2009 IV LLJ 641 (SC) [Fertilizers & Chemicals Travancore Ltd. v. Regional Director ESIC & Others]**, employees are necessary parties to the ESIOP. The respondent filed counter and submitted that the proposed parties are not necessary parties as admittedly they are the employees of the petitioner.

4. In the judgment of the Hon'ble Apex Court referred supra, it has been held that in an application under Section 75 of the ESI Act, 1958, employer can implead workmen or their trade union as parties, only when the contest of the employee was that the concerned person or persons were not its employees. The

admitted employees are not necessary parties. The learned Judge, considering the judgment relied on by the learned counsel for the petitioner and the judgment of the Hon'ble Apex Court, rejected the application filed by the petitioner in unnumbered stage.

5. Against the order of rejection dated 21.12.2010 in unnumbered I.A. In ESIOP Nos.1 & 2 of 2009, the present Civil Revision Petitions have been filed.

6. Heard the learned counsel for the petitioners as well the respondents and perused the materials available on record.

7. The only contention of the petitioners is that as per the judgment of the Hon'ble Apex Court, the petitioners have to implead its employees in the ESIOP, as they are necessary parties. The said contention is without any merits. In the judgment of the Hon'ble Apex Court referred supra, it has been held as follows -

8. In our opinion, wherever any petition is filed by an employer under [Section 75](#) of the Act, the employer has not only to implead the ESIC but has also to implead atleast some of the workers concerned (in a representative capacity if there are a

large number of workers) or the trade-union representing the said workers. If that is not done, and a decision is given in favour of the employer, the same will be in violation of the rules of natural justice. After all, the real concerned parties in labour matters are the employer and the workers. The ESI Corporation will not be in any way affected if the demand notice sent by it under [Section 45A/45B](#) is quashed.

8. In view of the above said ratio, the respondents 1 to 7 are not necessary parties to ESIOP as the petitioners have admitted that they are its employees. In view of such admission, the order of the learned Judge does not suffer any irregularity or interference by this Court.

9. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.07.2017

Index : Yes/No
rgr

To

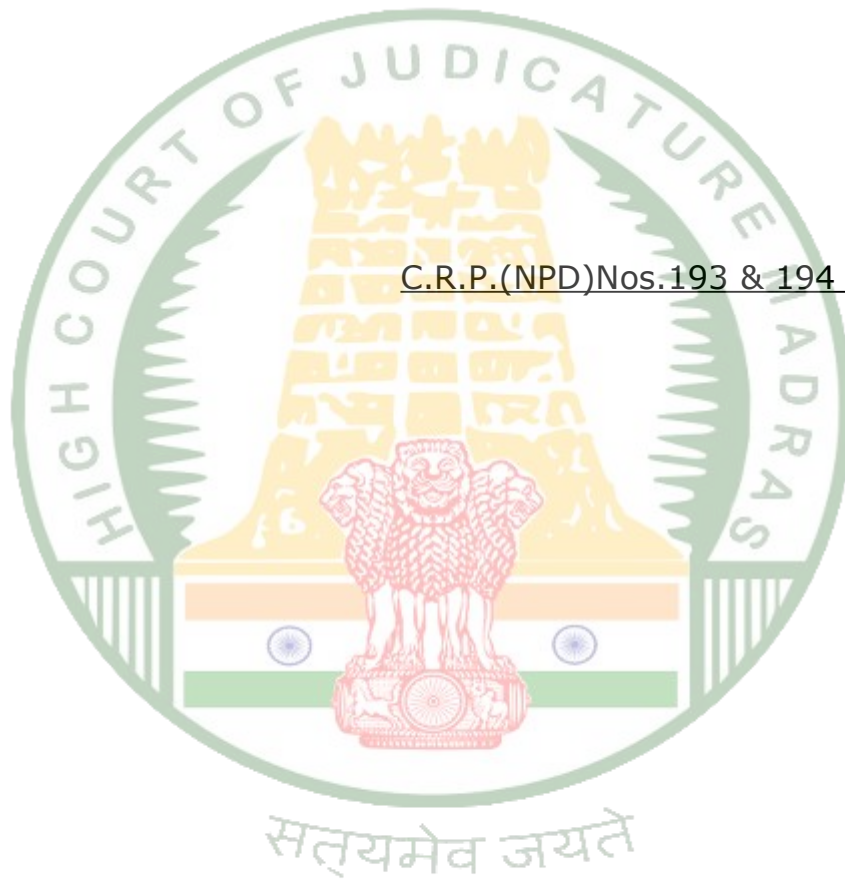
The Principal Labour Court,
Vellore.



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V.M.VELUMANI, J.

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