

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.12.2016

Judgment Pronounced on : 03.11.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1649 of 2003

The Regional Director,
Employees State Insurance Corporation Ltd.
143, Sterling Road,
Chennai - 600 034.

... Appellant/Respondent

-Vs-

Shree Sivasakthi Flour Mills Salem
Rep. by its Proprietor S.Chelladurai
98/2, Paranatamangalam Main Road,
Maiyanur, Salem.

... Respondent/Petitioner

Prayer:- Civil Miscellaneous Appeal under Section 82 of ESI Act, 1948 against the order of the Labour Court, Salem passed in ESIOP.No.3 of 2000 dated 23.10.2002.

For Appellant : Mr.K.C.Ramalingam

For Respondent : Mr.M.R.Raghavan

JUDGMENT

Challenging the order allowing ESIOP 3/2000, on the file of Labour Court, Salem, the appellant herein has preferred this appeal.

1. The brief facts are: The respondent is running a flour mills where it has employed at all times less than ten employees. While so, the respondent was served with a notice under Sec.45-A of the ESI Act with a direction to pay contribution of Rs.5,445/- for a period from 01-10-1993 to 31-03-1994. Alleging that at no time the respondent had employed more than 9 employees and as a consequence the respondent's unit was not covered by the ESI Act, the respondent moved the Labour Court, Salem with its petition seeking inter alia a declaration that the adhoc assesement made by the appellant under Sec.45-A of the said Act as arbitrary.

2. The appellant in its counter denied the respondent's contention and asserted that the former employed 10 employees in

its factory and hence would be covered by the ESI Act and justified its claim for contribution.

3.1 The original petition that the respondent had filed was taken along with another OP filed by the respondent in ESIOP 1/2000, which pertains to a period earlier to the one covered in this case, namely 28-01-1990 to

30-09-1993. Before the Court, the respondents have produced various documents of which Exts.A-10 and A-11 were the attendance registers and Exts.A-12 and A-13 were the acquittance registers and Ext A-14 was the wage register. Besides it also produced Exts.A-15 to A-22 day book and ledgers. The appellant has produced a solitary document in Ext.B-1 dated 10-04-1991, Preliminary Inspection Report.

3.2. In its common order, the Labour Court essentially had gone into the respondent's contention that at all point of time it had employed only less than 10 employees, and has held after perusing the several attendance registers, that none of them indicated that the respondent had employed 10 or more persons at anytime covered by the notice, and rejected Ext.B-1 as inconclusive as to the information it contained.

4. The learned counsel for the appellant submitted that against the order in ESIOP.No.1/2000, the appellant had preferred CMA.1702/2003. On 15-03-2010, this Court had allowed and remanded the matter back to the Labour Court, granting the appellant an opportunity to prove the correctness of its report. In this context, it is necessary to state that in Ext.B-1 report, it is stated that for February and March, 1990, ten persons were employed and the opportunity was granted to the appellant to prove only this fact.

5. Since both ESIOP 1/2000 and 3/2000 were decided on the same set of evidence, this Court directed the Registry to call for a report from the Labour Court, Salem, to ascertain the current status of ESIOP 1/2000 after it was remanded by this Court. Vide a communication in D.No:52/ dated 19-01-2017, the Labour Court has sent its report to the effect that the Court was in darkness about the pendency of the said case in its file.

6. Before turning to the merit of this case, it needs to be stated that Ext.B-1 is dated in 10-04-1991. This implies what is sought to be now proved for which an opportunity had been given to the appellant is about a fact that, as on today, is 26 years old. It would be one of the wonders of the world if only this is considered achievable. Therefore, this Court decided to examine Ext.B-1, if it atleast prima facie suggests something

to consider the merit of what it contains.

7. Ext.B-1, is the preliminary Inspection Report in Form C-10. At the bottom it contains an incomplete table. On the horizontal arm, it gives the month from 1 to 12, which supposed to indicate January to December. On the vertical arm is written 1990 and below it 1991. And against 2/1990 and 3/1990, it is written 10 and 10. Beyond this it states nothing. Even while adducing oral evidence as R.W.1, the Inspector of ESI, who authored Ext.B-1, has not attempted to provide any information as to who those ten who worked in February and March, 1990.

8. This Court does not consider that the appellant deserves a second innings. Primarily because with one piece of printed form in Ext.B-1, with the kind of details that has already been stated above, there is no possibility of proving a fact after twenty six years. Knowing the preponderating probability of the futility of the exercise, it would be plain injustice to the very cause of justice, if this matter were to be remanded back.

9. To conclude, this Court finds no merit in the appeal and the same is dismissed and the order of the Labour Court, Salem passed in ESIOP.No.3 of 2000 dated 23.10.2002 is hereby confirmed. No costs.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

ds
TO
THE PRESIDING OFFICER,
LABOUR COURT SALEM.

COPY TO

The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.K.C.RAMALINGAM, Advocate, S.R.No. 78049

Pre-delivery Judgment in
C.M.A.No.1649 of 2003

SSP(CO)
TR(09/01/2018)