



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1117 of 2016

The Employees State Insurance Corporation
represented by Deputy Director,
Sub-Regional Office,
Municipal Shopping Complex,
Sindupoonthurai,
Tirunelveli.

... Appellant

Vs.

Jameel Printers
rep. By its Proprietor,
P.Davood

... Respondent

Prayer : This Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act, to set aside the order dated 22.05.2015 passed by the ESI Court (i.e. Labour Court), Tirunelveli in E.S.I.O.P.No.15 of 2014 uphold the coverage and 45-A order dated 11.08.2012.

For Appellant : Mr.R.Ravindran
Respondents : No Appearance

JUDGMENT

Employees State Insurance Corporation has filed this appeal questioning the order dated 22.05.2015 made in E.S.I.O.P.No.15 of 2014 on the file of the Labour Court, Tirunelveli.

2.Heard the learned counsel for the petitioner. None appears on behalf of the respondent.

3.The respondent establishment was inspected by the Inspection Officer on 10.06.2010. The respondent is a printing press. According to the appellant Corporation, the number of workers was 11. Therefore, the said establishment was liable to be covered by the provisions of the Act. After issuance of notice, the order under Section 45 A of ESI Act was passed levying contribution to the tune of Rs.1,16,206/-. The same was challenged by the establishment. The labour Court noted that there were only eight employees as against the claim of 11 employees made by the appellant Corporation. In this view of the matter, the petition filed by the establishment came to be allowed.



4. Appearing for the appellant Corporation, the learned standing counsel submitted that in this case, as per the decisions of the Hon'ble Supreme Court, the workers are a necessary party. Before determining the matter under Section 45 A of the Act, the workers also should have been heard. In the present case, the matter had been dealt with as if it was an issue between the management and the Corporation. This is not correct. Even before the Labour Court, the workers ought to have been impleaded as parties either individually or in a representative capacity. Then and then only, the exact number of workers could have been found out. The Hon'ble Supreme Court had held that workers are a necessary party to the proceedings taken under Section 45 A of the Act. I therefore answer the first question of law framed in this appeal viz., whether coverage issue can be examined when there is non joinder of workers as parties, in favour of the appellant. The order of the Labour Court is set aside. The matter is remitted to the file of the original authority. The determining authority shall issue notice not only to the establishment but also to the workers either individually or in a representative capacity and thereafter decide the matter afresh and in accordance with law.

5. This appeal stands allowed on the above terms. No costs.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The ESI Court (i.e. Labour Court), Tirunelveli.

2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Ravindran, Advocate Sr.No.89772

ARUL

VB/SV/MMS/SAR4/09/01/2018/2P/4C

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