



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.619 of 2017

and

C.M.P.(MD) No.6461 of 2017

M/s.Ananthi Hospital,
rep. by its Partner,
Dr.S.Muthukaruppan

... Appellant/Petitioner

Vs.

1.The Deputy Director,
Employees State Insurance Corporation,
Sub-Regional Office,
Panchdeep Bhavan, ESIC Compay,
Salai Street, Vannarapettai,
Tirunelveli - 627 003.

2.M/s.Williams Para Medical College,
rep. by its Correspondent,
William Hospital Campus,
M.S.Road, Krishnancoil,
Nagercoil - 629 001.

3.Matha United Charitable Trust,
Matha Institute of Nursing,
rep. by its Correspondent,
Chithampara Nagar, PWD Road,
Nagercoil - 629 002.

... Respondents/Respondents

Prayer: This Appeal is filed under Section 82 of the Employees State Insurance Act, to set aside the order of the Employees State Insurance Court, dated 09.09.2016 passed in E.S.I.O.P.No.6 of 2015.

For Appellant

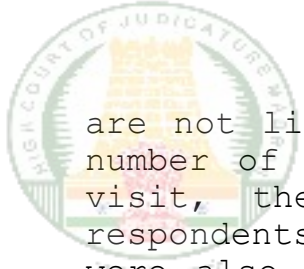
: Mr.M.Azeem

For Respondents

: Mr.R.Ravindran for R1

JUDGMENT

The first respondent herein passed an order dated 30.12.2013 under Section 45(A) of the E.S.I.Act ordering that the contribution payable by the appellant herein for the period in question is Rs.2,33,268/0. The appellant was issued with show cause notice dated 20.09.2013, proposing to determine the contribution payable by the appellant from May 2012 to July 2013. This show cause notice was apparently based on the visit note of the Social Security Officer of the Corporation. The case of the appellant was that they



are not liable to be covered by the said Act. According to them, number of employees was below the ceiling of 20. On the date of visit, the nursing students attached to the second and third respondents were in the premises of the appellant Hospital and they were also wrongly added to the list of employees. Therefore, the appellant while disputing their liability called upon the first respondent to furnish them the copies of the report of the Social Security Officer. The same was not furnished. Instead, enquiry dates were announced. The appellant made it clear that it was not possible to submit their explanation or attend the enquiry unless the records sought for by them made available to them. But, the order under Section 45-A came to be passed. Therefore, the appellant filed E.S.I.O.P.No.6 of 2015. But, the said petition was partly allowed by the E.S.I.Court, by order dated 09.09.2016. Challenging the same, this appeal has been filed.

2.The appeal was admitted on the following substantial questions of law which have arisen for consideration:

"1.Whether refusal to consider the request made by the appellant in their letters dated 07.10.2013, 25.10.2013, 07.11.2013 and 12.12.2013 to conduct the enquiry under Section 45A, to determine the liability for coverage, after the grant of the copy of the report of the Social Security Officer and an opportunity to cross examine him was in violation of the principles of natural justice and vitiated the order passed under Section 45A of the Act?

2.Whether the appellant was entitled for getting a copy of the report of the social security officer before the enquiry under Section 45A of the Act, since it had been solely relied on to pass the impugned order?

3.Whether the appellant was entitled to have an opportunity to cross examine the Social Security Officer, since the impugned order has been passed relying solely on the undisclosed report of the Social Security Officer?

4.Whether the students deputed by the respondents 2 and 3 colleges who were taking free training in the hospital of the appellant can be treated as "employees" as defined under Section 2(9) of the Act?

5.Whether the Lower Court was right solely relying on Ex.R1, Xerox copy of attendance register for May 2012 when the alleged copy captioned as students register and contained the name of the students?



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6. Whether the Lower Court has got jurisdiction to determine the contribution payable for the period from May 2012 to July 2013 at Rs.2,14,500/- on an adhoc basis, based on Ex.R.3 which included the payments made to doctors also and uniformly multiplying the wages of Rs.2,20,000/- for 15 months, when the payment made for each month will vary?

7. Whether the Lower Court ought to have remanded the matter back to the respondent instead of determining the contribution on a adhoc basis by itself without granting to the appellant an opportunity of being heard.

8. Whether the Lower Court has got jurisdiction to determine the number of persons working in the hospital uniformly as 29 based on Ex.R.1 since the name of 12 students of the respondents 2 and 3 were also entered in the attendance register?

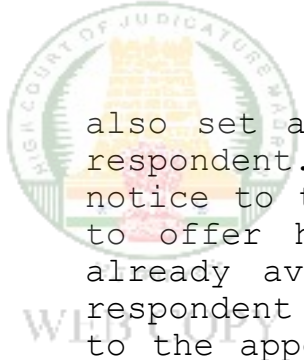
3. The appellant examined herself as P.W.1. As many as 18 documents were marked. The E.S.I. Court held that only after grant of sufficient opportunity, order under Section 45 A of the Act came to be passed. The E.S.I. Court held that the appellant was covered by the Act. Only as regards the quantum of contribution payable relief was given. Thus, the petition filed by the appellant was allowed only in part.

4. Heard the learned counsel on either side.

5. The learned counsel appearing for the appellant contended that mere sending of repeated enquiry notices would not amount to grant of opportunity. The simple question was whether the request was made for furnishing the relied upon documents and whether the same were actually given. The answer to this question cannot admit of any doubt. The entire proceedings are based on the inspection note of the Social Security Officer. Even though the appellant asked for copies of the same, the first respondent did not make it available before passing the order. Only before the E.S.I. Court, copy of the same was marked as Ex.R2. Therefore, on this sole ground of violation of principles of natural justice, the order dated 30.12.2013 passed by the first respondent herein under Section 45 A of E.S.I. Act is set aside. This appeal is disposed of by answering the third substantial question of law in favour of the appellant. The other questions are kept open since this Court is remanding the matter.

<https://hcservices.ecourts.gov.in/hcservices/>

6. Accordingly, the order dated 09.09.2016 made in E.S.I.O.P.No.6 of 2015 on the file of E.S.I. Court, Tirunelveli is



also set aside. The matter is remitted to the file of the first respondent. The first respondent is directed to issue a fresh notice to the appellant herein. The appellant herein is at liberty to offer his explanation. Since the copy of the visit note is already available on records, it is not necessary for the first respondent to once again furnish the same. In any event, it is open to the appellant to ask for copies of any other relevant material. After giving proper opportunity to the appellant, it is open to the first respondent to pass appropriate orders in accordance with law.

7.This appeal is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

The Judge,
Labour Court (ESI Court),
Tirunelveli.

Copy to:-

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

+One cc to Mr.M.P.Senthil, Advocate, SR.No.84086

+One c to Mr.M.Azeem, Advocate, SR.No.84272

+One cc to Mr.R.Ravindran, Advocate, SR.No.84182

Arul

RL/6C/4P/SKN/RSK/SAR1/27/11/2017

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