



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2017

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THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

C.M.A(MD)No.346 of 2016

and

C.M.P. (MD)No.4868 of 2016

M/s.Gori Automobiles,
Through its Partner Munawar Baig,
2, Jegajevan Ram Road,
Shenoy Nagar,
Madurai-20.

... Appellant/Petitioner

Vs.

1.The Employees State Insurance Corporation,
Through its Joint Director,
Sub-Regional Office,
4th Main Road, K.K.Nagar,
Madurai-625 020.

2.The Recovery Officer,
E.S.I.Corporation,
Sub-Regional Office,
4th Main Road, K.K.Nagar,
Madurai-625 020.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Corporation, to set aside the award passed in E.S.I.O.P.No.23 of 2008 dated 25.01.2016 on the file of the E.S.I.Court (Labour Court), Madurai, by allowing this Civil Miscellaneous Appeal.

For Appellant	:Mr.R.Aravindan
For Respondents	:Mr.R.Ravindran

J U D G M E N T

Heard the learned counsel on either side.

2.The appellant/establishment came under the coverage of the provisions of the ESI Act, since, 01.04.1996. They were allotted the code number 57-20212-74/SRO/MDU. They were initially remitting the contribution payable under the Act. Subsequently, there was a



default. The Corporation, therefore, issued show cause notices. There was no response. Therefore, the orders under Section 45A of the Employees' State Insurance Act came to be passed on various dates. They have been marked as R4 to R9. They are dated 07.04.2000, 16.07.2004, 22.02.2005 and 20.02.2006.

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2.The establishment filed E.S.I.O.P.No.23 of 2008, before the Employees' State Insurance Court, Madurai, for declaring that the ad hoc assessment made by the ESI Corporation under Section 45A of the Employees State Insurance Act, pertaining to the establishment for the period from 01.02.1999 to 31.03.2006 is illegal. They also specifically questioned the recovery proceedings. The Employees' State Insurance Court by order dated 25.01.2016, dismissed the petition. Questioning the same, this appeal has been filed.

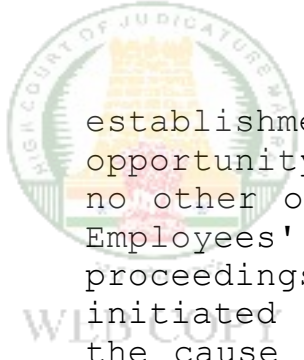
3.The learned counsel appearing for the appellant/ establishment contended that the authority did not follow the statutory mandate and the procedure before passing the impugned order under Section 45A of the Employees' State Insurance Act.

4.Per contra, the learned standing counsel appearing for the Corporation submitted that the authority strictly adhered to the procedure set out in the Employees' State Insurance Act.

5.A mere look at the petition filed by the appellant herein and the order passed by the Employees' State Insurance Court would show that the appellant came under voluntary coverage and were paying contribution in respect of its employees to the Corporation. It is submitted in the petition filed by the Employees' State Insurance Court that on account of a heavy financial loss in their business, the appellant could not pay the ESI Contribution.

6.The learned counsel appearing for the appellant would submit that, even though, the establishment, originally came under voluntary coverage, the question of paying contribution would arise only if the number of employees employed by the establishment was above the ceiling limit. This submission cannot be accepted in view of Section 1(6) of the Employees' State Insurance Act. The said provision states that if the establishment comes under the coverage of the Act, it will continue to be covered by the Act even if the number of persons employed therein at any time falls below the limit.

7.Therefore, the amenability of the establishment to the jurisdiction of the authority cannot be questioned. In the present case, on noting that returns were not being filed and that contributions were not being remitted, the authority issued show cause notices. In fact, the show cause notices in Form C-18 were despatched under registered post with acknowledgment due. Even though, an opportunity of hearing was afforded to the



establishment, the establishment not chose to avail the said opportunity. In these circumstances, the authority was left with no other options, but to pass an order under Section 45(A) of the Employees' State Insurance Act. As per Section 77 of the Act, the proceedings before the Employees' State Insurance Court must be initiated within a period of three years from the date of which the cause of Action arose. In the present case, the orders under Section 45A of the Employees' State Insurance Act were passed from 07.04.2000 to 20.02.2006. They have been marked as Exs.R4 to R9. It is seen that the petition in the case was filed only on 04.02.2008. Therefore, the orders passed under Section 45A of the ESI Act prior to 03.02.2005 could not be questioned. Therefore, on the very face of it, Exs.R4, R5, R6 and R7 are immune from challenge. The challenge to them is patently barred by limitation. Even as regards, the orders passed on 22.02.2005 to 20.02.2006, the appellant establishment has not made out any case for interference.

8.The ESI Court rightly observed that the establishment has not mounted a specific challenge to any of the orders passed under Section 45(A) of the Employees' State Insurance Act. There cannot be seeking of omni bus declaration as sought for by the appellant/establishment. Each order will have to be specifically challenged.

9.The appellant/establishment has sought a blanket declaration in respect of orders passed under Section 45(A) of the ESI Act. The petition filed by the appellant/establishment is on the face of it is not maintainable. The ESI Court rightly dismissed the same. The order under Section 45(A) of the Employees' State Insurance Act has to be passed only after complying with the principles of natural justice. The proviso to Section 45 (A) states that an opportunity of hearing must be afforded to the establishment in question. In this case, such opportunity was in fact given. The establishment which deliberately fails to avail the said opportunity cannot later complain of the violation of the principles of natural justice.

10.The learned counsel appearing for the appellant would contend that in this case the orders have been passed on the strength of inspection reports. A copy of the said inspection reports were not made available to him.

11.I am of the view that the appellant ought to have appeared in the enquiry and made request for supply of the said documents. A person who does not make out a case before the authority cannot be later heard to complain that he has not been given an opportunity. The order passed by the Labour Court is perfectly sound and does not require any interference. No substantial question of law had arisen in this appeal.



12.This Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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sd/
Assistant Registrar

Sub Assistant Registrar

tsg/psd

To,

1.The E.S.I. Judge,
The E.S.I.Court (Labour Court),
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2Copies)

+1cc to Mr.R.Ravindran, Advocate in SR.No.90137

+1CC to Mr.R.Aravindan, Advocate Sr.No.90502

GJM/PN/SAR-3-1.6.18-4p-6c

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