



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.418 of 2016

and

CMP (MD) No.5642 of 2016

Tuticorin Thermal Power Station,
(Unit of TNEB),
Muthiyapuram Village,
Tuticorin,
Rep.by its chief Engineer.

... Appellant/Petitioner

Vs.

Employees State Insurance Corporation,
Sub Regional Office,
Municipal Shopping Complex,
Salai Street, Sidhupoonthurai,
Tirunelveli - 627 001,
Rep.by its Joint Regional Director.

.... Respondent/Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 82 of the Employees State Insurance Act, 1948 against the order dated 21.03.2016 made in ESIOP.No.7 of 2013 on the file of the Labour Court, Tirunelveli.

For Petitioner : Mr.R.Vijayakumar

For Respondent : Mr.R.Ravindran

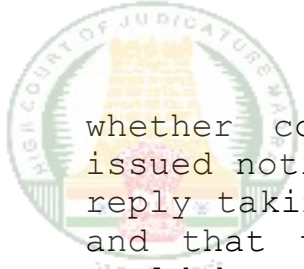
JUDGMENT

The appellant questioned the order made under Section 45 A of the Act before the Labour Court, Tirunelveli by filing ESIOP.No.7 of 2013 on the file of the Labour Court, Tirunelveli. The said ESIOP was dismissed by order dated 21.03.2016. Questioning the same, this appeal has been filed.

2.This appeal deserves to be admitted since the following substantial question of law has arisen for determination :

Whether the learned Labour Court was right in holding that the plea regarding not impleadment of contractors cannot be raised?

3.The appellant is a State Government undertaking engaged in power production. They engaged contractors for maintenance work. The question is whether the said contract workers are also to be brought within the purview of the ESI Act, 1948 and consequently



whether contribution is leviable. The respondent corporation issued notice in this regard. The appellant unit submitted their reply taking the stand that they are only the principal employers and that the immediate employer in respect of contract workers would be the independent contractors engaged by the appellant and that therefore, they ought to be made parties. Even though this specific plea was raised, the respondent passed an order under Section 45 A of the Act dated 25.01.2012 determining the contribution payable by the appellant.

4.The same was questioned before the Labour Court on the same ground. Even though the said plea was reiterated before the Labour Court, Tirunelveli, the Labour Court rejected the same on the premise that the said plea was not taken before the authority in the first instance. This reason assigned by the Labour Court is factually incorrect.

5.The learned counsel appearing for the appellant drew the attention of this Court to the explanation submitted by them in response to the show cause notice issued by the ESI Corporation. In Paragraph No.6, a request has been made to the respondent authority to issue notices to the individual contractors for only determination. In fact, the list of the contractors during the relevant time was also furnished.

6.The learned counsel appearing for the appellant placed reliance on the decision reported in **(2008) 4 MLJ 795 (SC) (Bhel Vs. ESI Corporation)**. The Hon'ble Supreme Court held that the determining authority must determine the issue only after hearing the contractors in question. In fact, the onus to implead the contractor was placed on the determining authority by the Hon'ble Supreme Court. The said decision relied upon by the appellant is squarely applicable to the facts of the case. But, this Court would go one step further.

7.In a later decision of the Hon'ble Supreme Court reported in **(2009) 10 SCC 671 (Employees' State Insurance Corporation Vs. Bhakra Beas management Board and another)**, the Hon'ble Supreme Court observed that it is the workers who would ultimately be affected one way or the other by the decision taken by the Corporation in this regard. Therefore, the workers are necessary parties. If they are in large numbers, the union can be impleaded in a representative capacity. While answering the substantial question of law in favour of the appellant and remitting the file to the file of the respondent for fresh determination, this Court would also direct the respondent to implead the workers in representative capacity also along with the independent contractors and pass orders in accordance with law after hearing all the concerned parties namely, the appellant herein and contractors and workers' representatives.



8. The order dated 21.03.2016 made in ESIOP.No.7 of 2013 on the file of the Labour Court, Tirunelveli is set aside. This appeal is allowed. However, it is made clear that all the factual and legal issues are left open. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Labour Court, Tirunelveli.
2. The Record Keeper, Vernacular Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Vijayakumar, Advocate Sr.No.88924

+1cc to Mr.R.Ravindran, Advocate Sr.No.89046

SKM

VB/CVC/SAR1/05.03.2018/3P/6C

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