



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.957 of 2016

and

C.M.P. (MD) .No.8593 of 2016

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

... Appellant/Petitioner

Vs.

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

2.Tuticorin Thermal Power Station,
Contractors Association,
Tuticorin-4,
Represented by its Secretary ... Respondents/Respondents

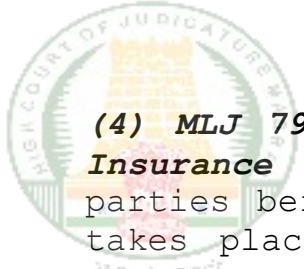
Prayer: Appeal filed under Section 82 of E.S.I. Act 1948, against the order dated 05.08.2016 made in E.S.I.O.P.No.2 of 2014, before ESI Court (Labour Court), Tirunelveli.

For Appellant	: Mr.R.Vijayakumar
For Respondents	: Mr.K.C.Ramalingam for R1

JUDGMENT

Heard the learned counsel on either side.

2.Tuticorin Thermal Power Station is the appellant herein. They were visited with an order under Section 45(A) of the E.S.I. Act. The appellant had engaged contractors who had in turn engaged workers. The question is regarding the quantum of contribution leviable in respect of the said workers. This issue has to be determined only in the presence of the contractors as well as the workers. The Hon'ble Supreme Court in the decision reported in **2008**



(4) **MLJ 795 Bharat Heavy Electricals Limited Vs. Employees' State Insurance Corporation** held that the contractors are necessary parties before determination under Section 45(A) of the E.S.I. Act takes place. In another decision reported in **2009 (10) SCC 671 (Employees' State Insurance Corporation Vs. Bhakra Beas Management Board and another)**, the Hon'ble Supreme Court held that the workers are necessary parties. The workers must be heard either in their individual capacity or a representative capacity. In this case, issue had been dealt with as if it is a matter concerning the appellant and the respondent alone. Two other vital stakeholders were totally left out and lost sight of by the E.S.I. Court. I, therefore, have to allow this appeal.

3. The order dated 05.08.2016 made in E.S.I.O.P.No.2 of 2014 before the ESI Court (Labour Court), Tirunelveli, is set aside. Consequently, determination made under Section 45 (A) of the Act impugned in these proceedings is also set aside. The substantial question of law raised in the appeal is whether the Corporation was right in determining the contribution under Section 45(A) of the Act without impleading the contractors in favour of the appellant. The matter is remitted to the file of the 1st respondent. The 1st respondent shall issue notice to the contractors in question as well as the concerned workers and thereafter proceed to determine the issue and pass orders afresh in accordance with law.

4. This Civil Miscellaneous Appeal stands allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORD)

/True Copy/

Sub Assistant Registrar

To

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

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

+2ccs to Mr.K.C.RAMALINGAM Advocate in SR. No. 90179

+1cc to Mr.R.VIJAYAKUMAR Advocate in SR. No. 89988

TSG

JS/JC/SAR.4/29.12.2017/2P-6C

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