



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.851 of 2015

M/s.Woraiyur Devanga Handloom Weavers,
Co-operative Production and Sales Society,
Woraiyur,
Represented by its Special Officer ... Appellant/Petitioner

Vs.

The Employees State Insurance Corporation,
Represented by its Regional Director,
143, Sterling Road,
Chennai-600 034. ... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 82 of E.S.I Act, 1948 to set aside the judgment and decree of Presiding Officer / District Judge, Labour Court, Tiruchirappalli in E.S.I.O.P. No.4 of 2003, dated 26.07.2012.

For Appellant : Mr.N.Balakrishnan

For Respondents : Mr.K.C.Ramalingam

JUDGMENT

This appeal filed under Section 82 of E.S.I Act, 1948 challenges the dismissal of the petition filed by the appellant herein under Section 75 of the said Act before the Presiding Officer / District Judge, Labour Court, Tiruchirappalli. The matter has a chequered history.

2.The appellant filed E.S.I.O.P. No.1 of 1981, when the respondent Corporation brought it within its purview. The said petition was dismissed on 18.02.1984. Thereafter, a series of notices were issued and finally show cause notice dated 23.07.1987 (Ex.R15) was issued by the respondent. The same was challenged by filing E.S.I.O.P.No.22 of 1987. It was allowed. The respondent filed an appeal before the High Court in A.A.O.No.487 of 1994 and the same was allowed on 22.03.2000. The appellant herein was permitted to place all his submissions before the respondent authority. Thereafter, the respondent issued a notice for personal hearing. The authorized officers representing the



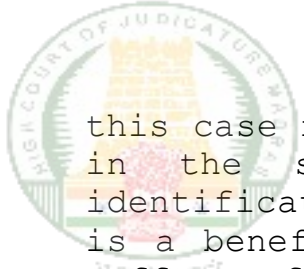
appellant society appeared before the respondent authority, but always sought adjournment. They pleaded that the records for the years 1978 to 1987 were not available. When threatened with coercive action, the representatives of the appellant society buckled under pressure and sought permission to remit the dues in installments. In fact, a sum of Rs.21,778 was paid. Since nothing further was forthcoming, the respondent passed the impugned order dated 30.07.2003 under Section 45(A) of the Act. This was challenged in E.S..I.O.P.No.4 of 2003 on the file of the Labour Court, Trichirappalli. The same was dismissed on 26.07.2012. Questioning the same, the present appeal has been filed.

3. Heard the learned counsel for both parties.

4. The learned counsel appearing for the appellant contended that the claim of the respondent Corporation is barred by limitation. He would place reliance on Section 77(1) of the Act. But this contention was rebutted by the learned counsel for the respondent by citing the decision of the Honourable Supreme Court reported in (2007) 1 SCC 584 (**ESI Corporation Vs. Santhakumar**). The Honourable Supreme Court held that the said provision would apply only in respect of the claim by the Corporation before ESI Court and to no other proceeding. Therefore, I see no merit in this contention of the learned counsel for the appellant.

5. I carefully went through the order impugned in this appeal. The order is a mere narration of the history of the litigation. Thereafter, the authority has summarily confirmed the demand set out in the show cause notice dated 23.07.1987. The said show cause notice has been marked as Ex.R15 before the ESI Court. It can be seen that based on the inspection of the Insurance Inspector made in November 1985 on assumptions a calculation sheet was prepared and the show cause notice sent. It is true that Section 45(A) of the act is in the nature of best judgment assessment. But, there has to be determination of the amount payable by the employer concerned. The word 'determine' casts a duty on the authority to ascertain definitely. A lis will be put on end to. An adjudicatory element is present in the process of determination under Section 45-A of the Act.

6. In this case, the appellant society has been headed by Government servants who were deputed from time to time. When faced with the threat of coercive action, they meekly gave letters undertaking to pay. On the strength of such undertaking letters, the liability of the appellant society could not have been determined. Section 45 of the Act would enables the authority to enter the premises of any establishment or factory and examine the books and other documents to obtain necessary information. In



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this case no such exercise was undertaken by the respondent. Even in the show cause notice dated 23.07.1987, there is no identification of the workers. Only numbers are given. ESI Act is a beneficial litigation. It is not intended to fill up the coffers of the Corporation. It is meant to benefit the workers. In this case the details of the workers is absent in the said show cause notice. When the show cause notice itself was bereft of particulars, the final order passed under Section 45(A) of the act could not have mechanically affirmed the same. That is why the Honourable Supreme Court in the decision reported in **(2009) 10 SCC 671 (ESI Corporation Vs. Bhakra Beas Management Board)** held that in any petition filed under Section 75 of the Act, workers are necessary parties.

7. In the present case, the workers were not made parties by the appellant herein. The ESI Court ought to have called upon the employer to implead at least some of the workers in representing capacity. When the workers were not before the Court, there could not have been an effective determination of the issue at all. Even the order passed by the ESI Court is patently unsatisfactory. It proceeds on the premise that the appellant Society has admitted the liability and agreed to pay the amount. When the issue is being contested right from 1981 onwards, it is inconceivable that the liability could have been admitted.

8. As rightly pointed out by the learned counsel for the appellant the Society is being manned by officers on deputation. They chose the easy route of seeking permission to pay in installments. Following the decision of the Honourable Supreme Court reported in **2009 10 SCC 671** I set aside the order impugned in this appeal. The matter is remitted to the file of the ESI Court for fresh adjudication on merits. The appellant shall take steps to implead the workers of their union before the ESI Court.

9. This Civil Miscellaneous Appeal is accordingly allowed. No costs.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1. The Presiding Officer / District Judge,
<https://hcservices.ecourts.gov.in/hcservices/>
Labour Court,
Tiruchirappalli.



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

+1 cc to Mr.K.C.Ramalingam, Advocate, in SR.No.82746

tsg

AE/KK/SAR3/31.10.2017/4P/4C

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