



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2017

CORAM :

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No. 1387 of 2015 & 1353 of 2016
and
CMP (MD) No. 11314 of 2016

C.M.A. (MD) No. 1387 of 2015 :

1. The Employees' State Insurance Corporation,
Through its Director,
Sub Regional Office, ESI Complex,
Salai Street, Vannarpettai,
Tirunelveli - 627 003.

2. Deputy Director,
Employees' State Insurance Corporation,
Sub Regional Office, ESI Complex,
Salai Street, Vannarpettai,
Tirunelveli - 627 003.

... Appellants

Vs.

1. M/s. Dharangadhara Chemical Works Ltd,
Sahupuram - Arumuganeri Post,
Thoothukudi District,
Rep. by its General Manager - HR.

2. Dharangadhara Chemical National Workers
Union (INTUC),
Reg. No. 2885-34, Kamarajar Salai,
Arumuganeri - 628 202, Through its Secretary.

3. Sahupuram DCW Employee's Union (AITUC),
Reg. No. 242/TN-3/211 ALF Road,
Peyanvilai, Arumuganeri 628 223,
Through its Secretary.

4. Sahupuram Chemical Anna Thozilalar Sangam,
(AIADMK), Reg. No. TN/156,
Opposite to DCW Ltd, Sahupuram,
Thoothukudi District, through its Secretary.

5. DCW-MLF,
Sahupuram, Thoothukudi District,
Through its Secretary.



6.DCW Labour Welfare Association,
Reg.No.140/CNR,
Main Road, Authoor,
Thoothukudi District,
Through its Secretary.

7.DCW Alluvalargal and Thozhilalargal
Munnetra Sangam,
Reg.No.2848,
Kalaighnar Arivalayam,
82-A, North Car Street,
Authoor, Thoothukudi District,
Through its Secretary.
(R2 to R7 given up)

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act, 1948, against the order dated 12.10.2015 of the Labour Court (Employee's State Insurance Court) Tirunelveli in ESIOP No.27 of 2014.

For Appellants : Mr.P.Ganapathisamy

For Respondents : Mr.P.Chandrabose for R1
Mr.M.R.Srinivasan for RR1 to 7

C.M.A.(MD)No.1353 of 2016 :

M/s.Dharangadhara Chemical Works Ltd,
(M/s.DCW Ltd,)
Sahupuram - Arumuganeri Post,
Thoothukudi District,
Rep.by its General Manager - HR.

... Appellant/Petitioner

Vs.

1.The Employees' State Insurance Corporation,
Through its Director,
Sub Regional Office, ESI Complex,
Salai Street, Vannarpettai, Tirunelveli - 627 003.

2.Deputy Director,
Employees' State Insurance Corporation,
Sub Regional Office, ESI Complex,
Salai Street, Vannarpettai,
Tirunelveli - 627 003.

3.Deputy Director (Legal),
Employees' State Insurance Corporation,
Sub Regional Office, ESI Complex,
Salai Street, Vannarpettai,
Tirunelveli - 627 003.

... Respondents



Prayer: This Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act, 1948, to set aside the orders of the ESI Court, Tirunelveli in ESIOP.No.3 of 2016, dated 24.08.2016.

For Appellant

: Mr.P.Chandrabose

For Respondents

: Mr.P.Ganapathisamy for R1 to R3

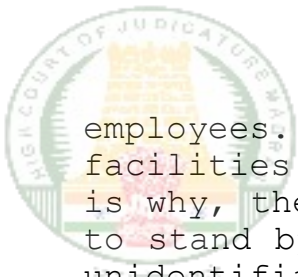
JUDGMENT

CMA(MD)No.1387 of 2015 :

CMA(MD)No.1387 of 2015 has been filed by the Employees State Insurance Corporation questioning the order dated 12.10.2015 made in ESIOP.No.27/2014.

2.Dharangadhara Chemical Works Ltd has been locked in litigation with the ESI Corporation since long. Number of petitions came to be filed. In fact, even Trade Unions approached this Court in support of the management. Though, the challenge mounted by the management did not succeed, the fact remains that the management did not enjoy any interim order since 21.11.1997. In other words, the ESI Corporation was not restrained by any Court order from proceeding in the matter. They passed an order under Section 45 A of the Act on 31.07.2013. The company was directed to make its contribution for the period from April 1992 to December 1996 and from June 1997 to December 1998. The same was under challenge before the ESI Court. The ESI Court took note of the fact that there was no interim order restraining the corporation from proceeding under the Act in the year 1997 onwards. It was therefore not open to the corporation to pass an order in the year 2013 claiming contribution for the period from 1992 to 1998. The ESI Court invoked the proviso to section 45 A of the Act which states that no order under Section 45 A shall be passed by the corporation in respect of the period beyond five years from the date on which the contribution shall become payable.

3.The ESI Court rightly noted that no doubt there was litigation pending between the company and the corporation till the year 2012. But the fact remains that there was no interim order. If the corporation chose to keep quiet in the matter, then obviously limitation would intervene. In this case, limitation did intervene in the form of statutory amendment in the year 2010. That apart, in Paragraph 18 of the impugned order, the ESI Court noted that the company has been regularly paying contribution right from the year 1997. The Corporation collects contribution only to provide facilities to the workers. In this case, no facilities were provided during the period in question by the corporation to the



employees. On the other hand, the company had provided sufficient facilities for its employees by spending considerable amount. That is why, the trade unions instead of supporting the corporation chose to stand by the management then. By now, the employees have become unidentifiable. The question of recovery of their contribution at this point of time has become impossible. Holding that the impugned order is barred by limitation, the ESI Court rightly allowed the petition. The order of the ESI Court setting aside the order dated 31.03.2013 passed by the corporation is sound in law. No substantial question of law has arisen for consideration in this appeal. Therefore, this appeal is liable to be dismissed.

4.This Civil Miscellaneous Appeal is dismissed.

CMA(MD)No.1353 of 2016 :

The appellant was aggrieved by the order passed by the Labour Court, Tirunelveli in ESIOP.No.3 of 2016, dated 24.08.2016 under Section 45A of the ESI Act .

2.The appellant preferred an appeal under section 45 AA of the Act before the appellate authority. He deposited the statutory sum which was a condition precedent for maintaining the appeal. The appellate authority passed an order dated 27.02.2014 confirming the earlier order passed under Section 45 A of the Act. Aggrieved by the same, the appellant filed an appeal under Section 75(1)(a)(g) of the Act before the ESI Court. The same was numbered as ESIOP.No.27/2014. The said OP was allowed.

3.Since the order under Section 45A of the Act was set aside, the appellant herein sought refund of the deposited amount but the same was denied. Therefore, the appellant filed ESIOP.No.3 of 2016 before the Labour Court, Thirunelveli. Since in the meanwhile, the order made in ESIOP.No.27/2014 became the subject matter of challenge in CMA(MD)No.1387 of 2015, the Labour Court dismissed the said petition by order dated 24.08.2016. The same is challenged in this Civil Miscellaneous Appeal. This Court today dismissed CMA(MD) No.1387 of 2015. Therefore, this CMA has to be consequently allowed.

4.When the appellant made statutory deposit as a condition precedent for challenging the order passed under Section 45A of the Act, it is entitled to refund of the same when the original order itself is set aside. This appeal is therefore allowed and the respondent corporation is directed to refund the deposited amount of Rs.29,93,765/- made by the appellant with simple interest at the rate of 7.5%. per annum.

5.The order dated 24.08.2016 in ESIOP.No.3 of 2016 passed by the Labour Court, Tirunelveli is set aside. This appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub-Assistant Registrar



1.The Presiding Officer,
Labour Court,
Tirunelveli.

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

+2ccs to M/s.P.Chandrabose, Advocate, SR.Nos.85931 and 85930

+2ccs to M/s.P.Gunapathisamy, Advocate, SR.Nos.85974 and 85975

+1 cc to Mr.M.R.Sreenivasan, Advocate, SR.No.85932

SKM
RL/8C/5P/MR/KKR/SAR1/22/11/2017

C.M.A. (MD) No.1387 of 2015 &
1353 of 2016
and
CMP (MD) No.11314 of 2016

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