

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.04.2018

Pronounced on : 23.10.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.3314, 3315 and 3316 of 2010

M/s C H Press

No.49, Mottur Pilliar Koil Street

Gandhi Nagar

Vellore -6

Represented by its

Honorary Secretary

..Appellant/Petitioner

Vs.

1. Employees' State Insurance
Regional Officer (Tamilnadu)
by its Regional Director
143 Sterling Road,
Chennai 600 034.

2. Recovery Officer having his office
at No.143, Sterling Road,
Chennai - 34.

...Respondents in
all appeals

PRAYER: Civil Miscellaneous Appeals filed under Section 82 of the Employees' State Insurance Act to set aside the orders of the Principal Labour Court, Vellore District, Vellore dated 08.09.2010 in ESIOP Nos.1, 2 and 3 of 2004 respectively.

For appellant in all appeals : Mr.S.Haroon - al - Rasheed

For Respondents in all appeals: Mr.G. Bharadwaj

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been preferred by the appellant against the dismissal of the ESIOP.Nos.1 to 3 of 2004 respectively by its Common order dated 08.09.2010 .

2. EIOP.Nos.1, 2 and 3 of 2004 was filed by the appellant before the Employees State Insurance Court, Vellore praying as follows;

to declare that the petitioner's establishment M/s.C.H.Press is not at all an establishment and covered by any provisions of the ESI Act and consequently declare that the 1st respondent's orders dated 26.4.2004, 23.4.2004 and

23.4.2003 in his reference TN/INSI/51 23351/83, TN/INSI/5L/23351-83 and TN/INSI/5L/23351-83 respectively made under section 45(A) of the E.S.I Act is void.

3. Since the issue involved in all these appeals are one and the same, these appeals are disposed of by a common order.

4. It is the case of the appellant that 'Cheshier Home', a charitable organisation was started in the year 1968 to accommodate leprosy cure patients in and around the then combined District of North Arcot. Originally, the Home was founded by late Lesmard Cheshier in India for providing medical care to cure leprosy patients irrespective of caste, creed and community and the said Home is a voluntary institution run without any profit motive.

5. In order to augment the income to meet the expenses for providing amenities to the inmates of the Home, it started a small printing Press by name and style C.H. Press on 30.10.1969. The Press engaged 5 employees on contract basis since 1969 from its inception for which, relevant Wage Register was maintained by the Press and the same was inspected by and by the Inspector of ESI. The said Register maintained by the appellant Press makes it clear the amount of salary paid by the Press and there were no further employees employed by the Press after 1969.

6. On 7.4.1993, when the Inspector attached to the respondents visited the Press and conducted an inspection of the press and signed in all the payment Registers which reveal the fact that there are only five persons employed in the said Press. There were actually only patients apart from the five regular employees in the Press, whereas, the Inspector have taken the signature of the then Honorary Secretary of the Press as if there were 14 employees and the then Honorary Secretary without knowing the implications of the Act and the purpose of the proforma had signed in the inspection report of the Inspector ESI and the respondent cannot take advantage upon collecting contribution from the petitioner even though they did not come under the purview of the Act. He submitted a report stating that the Appellant Press comes under the purview of Section 2(12) of the ESI Act of 1948 on and from 1.1.1991 and gave a report to the higher authorities to demand contributions.

7. It is further stated by the appellant that the case of the respondents that the same 14 persons are till continuing even after a lapse of 13 years, therefore the demand made by the respondents for the 14 persons for all these 14 years is unjustified.

8. The said Press was not inspected till date to verify the records and to assess the actual thing and it is the gross neglect by the Department and no attempt has been made for all these 11 years to inspect the appellant Press.

9. Hence the appellant/claimant, aggrieved against the amount demanded in the orders passed under section 45-A of the ESI Act 1650 by assuming the wages of Rs.1650/- and Rs.3,575/- per month for employee in respect of 14 employees for the period from 01.04.1993 to 31.12.1996 and 01.01.1997 to 30.09.2001; Rs.3575/- per month per employee in respect of 14 employees for the period from 01.10.2001 to 30.09.2003 and assumed wages of Rs.1650/- per month per employee in respect of 14 employees for the period from 01.01.1991 to 31.3.1993, the present Civil Miscellaneous Appeals have been filed.

10. The further grievance raised by the claimant / appellant in the OP was that the respondents have not given any fair chance of setting forth the appellant's grievance inspite of the letter of request for time for submitting the appellant's documents.

11. It is the averment of the appellant that the appellant has not employed more than 5 persons at any time and the question of the Press run by the petitioner comes under the ESI Act does not arise. Since the appellant has raised the objection under the impression that the respondents have given a quietus, the appellant did not pay rightly the amount as demanded.. But the appellant was surprised to receive the letter dated 26.4.2004 demanding the payment of Rs.40,368/- from the respondents .

12. Further it is the grievance of the appellant that subsequently on 16.6.2004, a communication was served on the appellant by the respondents demanding for interest in addition to the amount that has been already demanded in their letter dated 26.4.2004. सत्यमेव जयते

13. On the other hand, it is the case of the respondent that the petitioner's Press was registered under Licence No.0037/37 in 1970 itself and used power for its printing and binding work from 1970 itself under item No.9(a) and employed 14 number of coverable employees for wages from 1.1.1991 to 30.4.1993.

14. It is their further case that on scrutiny of reports viz., the preliminary inspections report dated 7.4.1993 of the respondent Inspector and Form 01 dated 7.4.1993 of the appellant, the respondent Officer has rightly found it fit to cover the appellant's Press as a Factory under Section 2(12) of the Act Wages 1.1.1991 provly and informed the same in his Allotment letter in Form C11 dated 21.6.1993. He also informed therein that it had been allotted a distinct code

No.51-23351-83 and requested to register its employees pay contribution and maintain records in respect of them under various provision of the Act with the assistance of the Manager, Local Office at Vellore, if necessary.

15. The appellant has also requested the respondent Corporation to register its press under the purview of the Act and to issue the code number to enable to deduct contribution from its employees.

16. It is found that the appellant's averments that it had not employed more than 5 employees is not correct and on verification of the attendance register and wage register by the respondent inspector on 7.4.1993, it was found that the appellant had employed 14 number of employees as on 1.1.1991. The appellant also in its Form 1 dated 7.4.1993 has furnished the fact that it had employed 14 number of employees for wages for the period from 1.1.1991 to 30.4.1993.

17. Hence the representation by the appellant is false one and it has failed to pay contribution under section 40 r/w. Section 39 of the Act in terms of Regulation 29, 31 and 33 of the ESI General Regulations Act 1950 at the rates specified in Rule 51 of the ESI (General) Rules 1950.

18. Hence the respondent officers issued show cause notice in Form C1 B dated 20.7.1993 proposing contribution of Rs.28,644/- on the wages paid to its employees on adhoc basis for the period from 1.1.1991 to 30.3.1993. The appellant was also given an opportunity for 'being heard' on 28.10.1993.

19. Further, the appellant in its letter dated 23.10.1993 requested the respondent officer to adjourn the hearing till 29.11.1993 and as requested another opportunity was also afforded to the appellant to hear the same on 29.11.1993. Again the appellant requested for time to produce relevant records, by its letter dated 1.12.1993, and informed the respondent that its request for exemption of its press from the purview of the ESI Act is to be taken up with the State Government and again sought time till 31.12.1993 to represent its case.

20. But the request of the petitioner made to the Government of Tamilnadu for exemption was rejected. Hence, the petitioner has not come forward to produce any records for the actual due of contribution to the said show cause notice dated 20.07.1993.

21. Even after the rejection of the exemption, the appellant instead of starting compliance in respect of its employees from the date of coverage, has chosen to state in the letter dated 31.5.2003 that its Home has been registered

under the Societies Registration Act 1860 and hence its members are not coverable under the Factory Rules as it had employed only four workers.

22. It is also the representation made by the petitioner that at that time, he employed only 4 workers, but that is not true. However the petitioner was advised that the coverage under the Act is continuous and maintainable and hence the contributions have to be made within 15 days. But the petitioner had not produced the relevant records to quantify the contribution for the period noted in the show cause notice. Again and again the petitioner sought for adjournment and final opportunity was given on 31.3.2004. Even on 14.4.2004 also, the petitioner sought for an adjournment. Hence the respondent Officer, left with no other alternative, had determined the contribution of Rs.40,368/- as per provisions under Section 45A of the Act and passed an order dated 26/27.4.2004 which is quite valid, illegal and unsustainable.

23. The tribunal, after analysing the documents, found the case of the petitioner as the letter dated 26.4.2006 of the demand by the respondent is unsustainable. After perusing the entire evidence regarding the information given by the appellant to the respondent and further the inspection made by the respondents and scrutiny report, the show cause notice and further failure on the part of the appellant to produce documents relating to contribution, the demand was made by the respondent, the tribunal has given a finding that the petitioner has not filed any documents to show that the coverage under the ESI Act could not arise at all to the petitioner Press as the number of workers are below 10.

24. The documents produced by the Corporation would establish the fact that 14 employees for wages were employed in the appellant Press and they are liable to pay the contribution to the ESI Corporation on 1.1.1991 to 30.4.1993 and that the finding given by the tribunal is that the petitioner has not furnished any record to show that the petitioner's Press will not come under the purview of ESI Act 1948 and the petitioner had failed to establish the fact and hence the order passed by the respondent Corporation is in accordance with law and hence the said petition filed by the appellant was dismissed.

25. Heard both sides.

26. On the side of the appellant, no exhibits were filed and on the side of the respondents, Ex.R.1 to 16 were filed in ESIOP.No.1 of 2016 and Ex.1 to Ex.18 were filed in ESIOP.No.2 of 2004 and Ex.R1 to Ex.R.18 was filed in ESIOP No.4 of 2004.

27. It is the argument advanced by the appellant that the appellant's institution is a voluntary institution run without any profit and the motive is only to serve the helpless people by providing medical care and the said Press is also needed to raise funds to provide amenities to the inmates by starting a small Printing Press by the name and style of CH Press and it engaged five employees on contract basis and the Register maintained by the Press will make it clear the amount of salary paid by the Press and there are also only five employees in the said Press and except 5 regular employees, others are only patients.

28. The demand made by the respondents for 14 persons for all these years is unjustified and unlawful. It is argued by the appellant that subsequent to the survey of insurance inspector, no attempt was made by the department to inspect the appellant press to verify the records and assess the actual routine affairs of the Department. It is further argued by the appellant that how the figure was arrived was answered by the respondent that only it is on Adhoc basis. Hence on the ground also, the appellant claimed that the demand made by the respondent on 26.4.2006 for the period from 1.1.1991 to 31.3.1993 is not maintainable.

29. The grievance of the appellant is that the appellant was not given a fair chance to put forth its grievance and the records before the respondent Officer and requested time for submitting the same. But on the contrary, the respondents have argued that a preliminary inspection was done by the respondent inspector and an allotment letter in Form C 11 was also sent to the appellant and further letter made by the appellant to the respondent and all the correspondences between the appellant and the respondent are clearly stated in Exhibits produced as documents.

30. Through out the arguments, the appellant has stated that the respondent without disclosing the future cause of action subsequently on 16.6.2004, again served a communication dated 19.6.2004 demanding for interest to several lakhs in addition to what was already demanded in the letter dated 26.4.2004.

31. It is argued by the appellant that there is no evidence that the appellant had employed 14 persons at the relevant period, but it is petitioner's own admission that he was employing more than 14 persons during the period.

32. It is also argued that the appellant preferred a proceedings before the Government for exemption. The Government in its order GO.Ms.287 dated 30.9.2004 passed an order holding that the ESI Act itself is not applicable to the Press and therefore, no exemption is required. On the other hand, further argument made by the respondents was that

already petitioner submitted Form 01 dated 7.4.1993 under item No.6(a), that the Press has been registered under licence No.0037/37 in 1970 itself and used power for its printing and binding work from 1970 itself and Item No.9(a) and employed 14 number of coverable employees for wages from 1.1.1991 to 30.4.1993.

33. It is his further argument that the appellant also in its letter dated 24.6.1993 requested the respondent Corporation to register its Press under the purview of the Act. When the respondent after scrutiny and inspection has found out the fact that the appellant has engaged 14 number of employees for wages, the show cause notice in Form C-18 dated 20.7.1993 proposing contribution of Rs.28,644/- on the wages paid by its employees on Adhoc basis for the period from 1.1.1991 to 30.3.1993 and afford an opportunity to the appellant for being heard on 28.10.1993.

34. As already stated, when the number of adjournments sought for by the appellant and the respondent also hearing the grievance of the appellant and afforded sufficient opportunity in the absence of any explanation or submission of documents, the respondents left without any option, passed an order dated 26/27.4.2004 which is a valid and legally enforceable order.

35. It is also argued that inspite of opportunities afforded to the appellant to produce the relevant documents and records, regarding the actual due of contribution, the appellant has failed to produce the same and further it is argued that the petitioner's Press under Section (2) (12) of the Act as a factory is proved beyond doubt as it had employed 14 number of employees. Hence the contribution claimed by the said order is a reasonable one.

36. Further argument raised by the respondent is that the respondent is empowered to claim interest under Section 39 (5) of the Act and also has every right to initiate recovery proceedings as per the provisions under section 45C to 45 I of the Act.

37. It is also further argued by the respondent that when the appellant establishment is coverable under the ESI Act and the contributions are recoverable, then the only provision under which exemption could be granted is under Section 87 of the ESI Act.

Section 87 of the ESI Act reads as follows ;

"The appropriate Government may be notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or

establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification review any such exemption for periods not exceeding one year at a time."

38. The appropriate Government is the State Government in this case as defined under Section 2(1) of the ESI Act. Hence the State Government has the authority only to exempt the factory or establishment from the operation of the Act for a period of one year at a time.

39. But here, the petitioner cannot deny the coverage of their establishment under Section 2(12) that they themselves have declared that 14 persons were employed for wages since 1991 in the employees Registration Form in 01 and the same was verified by the Inspector on 7.4.2003 and found to be correct.

40. On perusal of the documents and also arguments heard by both sides, it is observed that the averment made by the petitioner that they had employed only five persons is incorrect even as per his own application and also the details mentioned in the attendance Register and the Wage Register by the respondent during his inspection on 7.4.1993. It is also observed that the appellant was given sufficient opportunity to establish his case, but he failed to appear before the respondents. So the number of employees employed by the petitioner is not proved as the appellant has stated that he employed only five employees.

41. Further, the appellant in his own petition addressed to the Honorary Secretary that 14 employees were employed and the admission by himself proves that he established the fact that 14 persons were employed in the printing Press. The proof of list furnished by the respondent also proves the fact that the appellant was given sufficient opportunity but the appellant has not utilised the same and the respondents were forced to determine the contribution by its report and also letter in which the appellant itself has made an admission that it had employed 14 persons. Hence, the order made by the respondent corporation under section 45A of the ESI Act as amended under the same as Ex.R16 is a fair order and it is an order within the purview of law.

42. Further in Ex.R.10, which is the order of the Labour Employment Department, Government of Tamilnadu, dated 10.5.1995, wherein the request by the petitioner for grant of exemption from the provisions of ESI Act 1948 to the appellant Press was not considered. The Government of Tamilnadu has rejected the request of the appellant for granting exemption to the appellant. Further he is coming under the provisions

of ESI Act for payment of contribution as per his own admission.

43. So in view of the above arguments and discussions and documents filed, the appeals deserve to be dismissed and the order of the tribunal is liable to be confirmed.

44. In fine,

(i) the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected M.P.Nos.1,1,1 of 2010 are closed.

(ii) the common order passed by Principal Labour Court, Vellore District, Vellore dated 08.09.2010 in ESIOP Nos.1, 2 and 3 of 2004 is hereby confirmed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

msr
To

1. The Principal Labour Court, Vellore District, Vellore.
 2. The Record Clerk,
VR Section, High Court,
Madras.
- + 3 ccs to M/s. T.S. Gopalan, AdvocateSr.71816
+ 1 cc to Mr.G. Bharadwaj, Advocate sr.72776

C.M.A.Nos.3314, 3315
and 3316 of 2010

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