

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1233 of 2018
and CMP.No.10044 of 2018

Hotel Guru Private Limited
No.69, Rukmani Lakshmipathy Road
Chennai - 600 008.

.. Appellant

Vs.

1. The Deputy Director
Regional Office
Employees State Insurance Corporation
No.143, Sterling Road
Chennai - 600 034.

2. The Insurance Inspector
Nungambakkam
Chennai - 600 034.

.. Respondents

Prayer :

Civil Miscellaneous Appeal filed under Section 82 of the Employees' State Insurance Act, 1948 (Act 34 of 1948), against the order and decree dated 14.11.2007 in E.I.O.P.No.64 of 2003 passed by the Principal Labour Court, (Employees' Insurance Court), Chennai.

For Appellant : Mr.D.Abdullah

For Respondent : Mr.S.P.Srinivasan
Standing Counsel for ESI

JUDGMENT

This appeal is preferred against an order dismissing the petition in E.I.O.P.No.64 of 2003, which the appellant had filed before the Employees Insurance Court (Principal Labour Court), Chennai, challenging the order slapping a liability of Rs.2,34,939.40 on the appellant under Section 45(A) of the ESI Act, 1948.

2. The learned counsel for the appellant submitted that the

relevant year in relation to which the liability was fastened by the respondent is 1993 to 2001. He also submitted that during enquiry preceding the order under Section 45-A, the appellant inadvertently did not produce the relevant records, and thereafter the impugned order dated 28.11.2002 came to be passed by the respondent, arbitrarily fixing the contributions payable at Rs.2,34,939/-under Section 45-A of the ESI Act, 1948. It is, in these circumstances, the claim for contribution was challenged by the appellant before the Employees Insurance Court (Principal Labour Court), Chennai.

3. This case is admitted on the following substantial questions of law :

1. Whether the non-speaking, cryptic order and decree of the trial Court is sustainable in law?

2. Whether the C-18 notice and the impugned 45-A order dated 28.11.2002 made on mere assumptions are valid in law?

3. Whether the order and decree of the trial Court passed without looking into the oral and documentary evidences is valid in law?

4. The learned counsel for the appellant would now submit that before the ESI Corporation, the appellant had taken out an application to appoint a commission for perusing its books to identify the list of items which are liable for contribution and others which fall outside the purview of the same. The Commissioner had filed his report before the Court. This Commissioner's report has not been considered by the Court below.

5. Per contra, the learned counsel for the respondent would argue that the Commissioner's report has little relevance in impugning the order passed under Section 45-A of the ESI Act, and it has no substitute for the obligation cast on the appellant in producing all the relevant records before the relevant authority at appropriate time.

6. After perusing the impugned order, this Court could come to only one conclusion : The Presiding Officer, Labour Court, does not appear to have applied her mind to any of the facts involved. Therefore, the order dated 14.11.2017 in E.I.O.P.No.64 of 2003, on the file of the Employees Insurance Court (Principal Labour Court), Chennai, is hereby set aside and the matter is remanded to the Court below for it to consider the matter afresh within a period of two months from the date of receipt of a copy of this order. Parties are directed to appear

before the Court below on 10.08.2018. Hence, this petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ds

To:

1. The Principal District Judge
Employees Insurance Court
Chennai.
2. The Deputy Director,
Regional Office, Employees State Insurance Corporation,
No.143, Sterling Road, Chennai-34.
3. The Insurance Inspector
Nungambakkam, Chennai - 600 034.
4. The Principal Labour Court,
(ESI) Chennai.

+1cc to Mr.D.Abdullah, Advocate, S.R.No.50658

+1cc to Mr.S.P.Srinivasan, Advocate, S.R.No.51073

C.M.A.No.1233 of 2018

CP(CO)
CS/06/08/18

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