

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2018

CORAM

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.Nos.2794 of 2016 & 869 of 2017
in
E.I.O.P.Nos.120 & 121 of 2005

C.M.A.No.2794 of 2016

M/s.Spurtank Road Filling Station

Represented by its Proprietor

F.Davendran

No.89, Spurtank Road

Chetpet, Chennai - 600 031.

... Appellant/Petitioner

Vs.

1.The Employees State Insurance Corporation

Represented by its Regional Director

No.143, Sterling Road, Nungambakkam

Chennai - 600 034.

2.The Recovery Officer

Employees State Insurance Corporation

No.143, Sterling Road, Nungambakkam

Chennai - 600 034.

... Respondents/Respondents

Payer: Civil Miscellaneous Petition filed under Section 82 of the Employees' State Insurance Act, 1948, to set aside the order and decree passed in E.I.O.P. No.120 of 2005 dated 09.03.2016 by the Employees Insurance Court (Hon'ble Principal Labour Court), Chennai.

For Appellant : Mr.L.Rajasekar

For Respondents: Mrs.S.Jayakumari

C.M.A.No.869 of 2017

M/s.Spurtank Road Filling Station

Represented by its Proprietor

F.Davendran

No.89, Spurtank Road

Chetpet, Chennai - 600 031.

... Appellant/Petitioner

Vs.

1.The Employees State Insurance Corporation
Represented by its Regional Director
No.143, Sterling Road, Nungambakkam
Chennai - 600 034.

2.The Recovery Officer
Employees State Insurance Corporation
No.143, Sterling Road, Nungambakkam
Chennai - 600 034.

...Respondents/Respondents

Payer: Civil Miscellaneous Petition filed under Section 82 of the Employees' State Insurance Act, 1948, to set aside the order and decree passed in E.I.O.P. No.121 of 2005 dated 09.03.2016 by the Employees Insurance Court (Hon'ble Principal Labour Court), Chennai.

For Appellant : Mr.L.Rajasekar

For Respondents: Mr.K.Prabakar

C O M M O N O R D E R

These appeals have been preferred by appellant against the dismissal of their petitions before Employees' State Insurance Court, which were filed challenging the order passed under Section 45-A of Employees' State Insurance Act, 1948, bringing the appellant under the Employees' State Insurance coverage and demanding Employees' State Insurance contribution for the period from April 2004 to September 2004.

2.The appellant is running a fuel filling station. When an inspection was made by the Employees' State Insurance Authority on 07.05.2003, it was found that the appellant was employing about 18 employees and therefore, Employees' State Insurance contribution was demanded.

3.Challenging the said order under Section 45-A of the Employees' State Insurance Act, [hereinafter called as "the Act"] the appellant approached the Employees' State Insurance Court [hereinafter called as "ESI Court"]. The ESI court found that the appellant did not produce any documentary evidence and at the time of inspection, one Mr.Ruban, who was employed as a cashier gave the details of 18 persons who were employed under the appellant management and therefore, ESI contribution has to be made.

4.Further, the appellant neither gave any reply to notice dated 23.06.2003, issued under Form C-11, pursuant to the inspection made on 07.05.2003 nor adduced any evidence during the enquiry conducted by the Employees' State Insurance Authority. Therefore, it was found that the order passed under Section 45-A of the Act was sustainable and hence, the ESI Court dismissed the petitions preferred by the appellant. The said order is being challenged before this court.

5.Heard Mr.L.Rajasekar, learned counsel appearing on behalf of the appellant, who would submit that there was no inspection as alleged by the respondents and the documents have been fabricated to suit the convenience of the respondents. At the time of enquiry, when the appellant appeared before the respondent/ESI Corporation, his signatures were obtained in blank papers and they were converted into documents, to exhibit the list of persons, who were employed under the appellant management.

6.He would further submit that it is the case of the respondent Corporation that the appellant was not present at the time of inspection. However, the Tribunal found that the signature found in the inspection report and the PW1's evidence is one and the same. During the course of inspection, when the proprietor was not available, it is not known as to how the Tribunal could give such a finding that the person who signed in the inspection report as well as in the evidence are one and the same. He would submit that the documents have been fabricated to suit the convenience of the Employees' State Insurance Corporation. Hence, the learned counsel seeks to set aside the order passed under Section 45-A of the Act.

7.However, Mrs.Jeyakumari, learned counsel appearing for the respondents would contest the claim made by the learned counsel for the appellant. She would submit that the details regarding the persons, who were employed and the persons who were in the fuel filling station, at the time of inspection is only based on personal inspection. Further, the inspection report, dated 07.05.2003, would reveal that list of names of the employees have been given in the appellant's letterhead, viz., 9 persons in the first shift and 7 persons in the second shift and Mr.S.Prabhu as Manager and Mrs.Leelavathy as Accountant.

8.Considering the rival submissions, it is impossible to think that the appellant's letter head have been taken away by the Inspector. Further, unless the names of the persons and other details are given by the appellant or his representative, it is not possible to imagine the names of the persons to be incorporated in the inspection report.

9. Therefore, this court holds that there was an inspection on 07.05.2003 and the details including the names of the persons employed have been incorporated in the inspection report, based on the information given by either the cashier or by any of the representative of the appellant in the fuel filling station. By this finding, this court rejects the contention of the appellant that there was no inspection and the inspection report has been fabricated by making use of the appellant's signature obtained in the blank papers at the time of enquiry.

10. The appellant had a chance to repudiate the claims made by the respondent/ESI Corporation, when they issued C-18 notice, dated 04.02.2005 and C-11 notice, dated 23.06.2003 by giving suitable reply. However, no reply has been given. Even during enquiry, the appellant appeared only on 04.02.2005 and sought time till 15.02.2005. Subsequently, he did not appear in the next hearing on 15.02.2005. Even though the findings of the Employees' State Insurance Court that the signature found in inspection report and the signature found in the PW1 evidence are one and the same, there is no necessity to rely upon the signature and to give an opinion with regard to the signature. Even proprietor could have signed the inspection report stating that he is Manager and thereafter, he could have appeared before the ESI Court, as if he is a proprietor. The officer cannot have any chance to verify the same. Furthermore, the inspection report is not denied by the appellant at any point of time and therefore, the inspection report holds good and the variation in signature does not have any impact on that.

11. As long as the details given by the appellant are not repudiated, merely denying the signature is not enough. If really 18 persons were not employed by the appellant, he could have denied the same and had given the names of the actual persons employed. However, no such exercise has been made by the appellant. Therefore, the ESI Corporation rightly passed the order under Section 45-A demanding Employees' State Insurance contribution for the period from April 2004 to September 2004.

12. In view of the above stated position, the appeals fail and the same are dismissed. The appellant has to pay to the respondent/ESI Corporation as per the demand made by them, after deducting the amount already deposited within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

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To

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

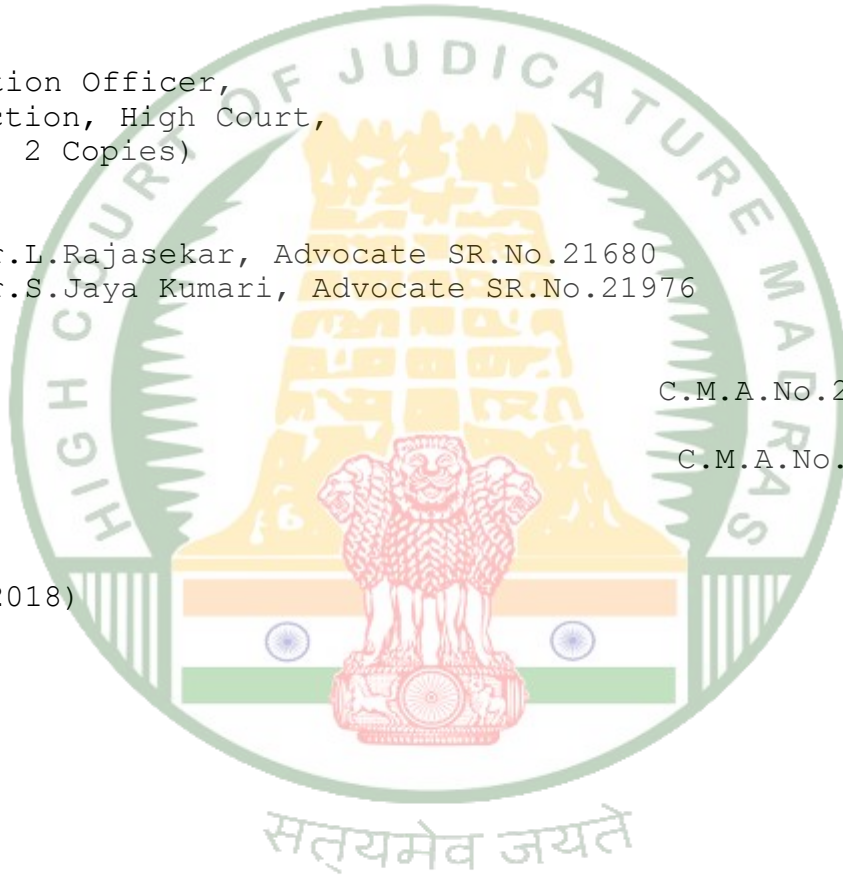
2.The Recovery Officer
Employees State Insurance Corporation
No.143, Sterling Road, Nungambakkam
Chennai - 600 034.

3.The Section Officer,
VR Section, High Court,
Madras.(2 Copies)

+1cc to Mr.L.Rajasekar, Advocate SR.No.21680
+1cc to Mr.S.Jaya Kumari, Advocate SR.No.21976

C.M.A.No.2794 of 2016
and
C.M.A.No.869 of 2017

RSK(CO)
GN(18/04/2018)



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