

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1542 OF 2013
AND M.P.NO.1 OF 2013

M/s.Rajkamal Industries
Represented by the Proprietrix
No.57/3, Kunnur High Road,
Chennai - 600 023. ... Appellant /Petitioner

Vs.

Employees' State Insurance Corporation
143, Sterling Road,
Nungambakkam,
Chennai - 600 034.
Represented by
1. Assistant / Deputy Director
2. Recovery Officer ... Respondent /Respondent

PRAYER: Civil Miscellaneous Appeal filed Under Section 82 of the Employees' State Insurance Act, 1948, against the order and decree dated 14.03.2011 passed by the E.I. Court Judge in EIOP No.81 of 2003.

For Appellant : Ms.Rita Chandrasekar
for M/s.Aiyar & Dolia

For Respondent : Mr.T.N.C.Kaushik

J U D G M E N T

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This Civil Miscellaneous Appeal is preferred against the order dated 14.03.2011 passed in EIOP No.81 of 2013 by the Principal Labour Court (Employees' Insurance Court) Chennai.

2. The appellant is an industry. The respondent Employees' State Insurance Corporation passed an order under Section 45-A of the Employees' State Insurance Act for payment of contribution to the tune of Rs.86,139/- for the period between 4/96 and 1/99 vide order dated 10.07.2003. The said order has been challenged before the Employees' Insurance Court.

3. The main issues raised by the appellant are (i) whether the Industry falls within the purview of Employees' State Insurance Act or not ?; and (ii) whether the order passed by the Authority of ESI Corporation is liable to be set aside or not ?.

4. After analysing the elaborate oral and documentary evidence, the Employees' Insurance Court came to a conclusion that the appellant falls within the purview of Employees' State Insurance Act, but for want of fair opportunity, remitted the matter back to the original authority for fresh consideration. Aggrieved over the order of the Employees' Insurance Court, the appellant preferred this appeal on the following substantial questions of law:-

"1. Whether the Court below erred in holding that the appellant's Establishment is covered under the provisions of the Employees' State Insurance Act, 1948, especially against the dictum enunciated by the Hon'ble Supreme Court in the case reported in 1999 LAB U.V. 956 as well as our Division Bench judgment reported in 1978 LAB L.C. 1266.

2. Whether the Court below erred in accepting the evidence of R.W.2 who deputed for R.W.1 even though R.W.1 himself came to the witnessbox and deposed."

5. According to the appellant, there is a distinction between the employee and persons employed for wages. According to the appellant, they were imparting training on a philanthropic basis to mentally retarded women referred by Women Developmental Agency and YWCA. Therefore, they were not persons employed for wages and therefore, they will not fall within the purview of Employees' State Insurance Act. In support of their contention, the appellant relied on a dictum of the Hon'ble Supreme Court in a case reported in 1999 LAB I.C. 956, wherein it has been observed as under:

" "Employees' State Insurance Act, (34 of 1948) Ss 1,2(9) - Notification dt. 30.9.1988 issued by Delhi Administration - Applicability of Act to shops - condition - Twenty or more persons to be employed for wages - not sufficient that 20 persons are employed - they should be 'employee' within S.2(9) getting wages prescribed therein."

6. On a perusal of the said judgment, it is clearly seen that the Court below has considered the evidence of the

respondent that there was admittedly an inspection conducted by the Inspector of of the respondent Corporation. The inspection report reveals that number of employees worked between various periods. As per the said report, more than 20 persons were employed with the aid of electric power. Even though the appellant has contended that they were not employed for wages, they did not produce any evidence to prove the same.

7. In a judgment of the Kerala High Court in REGIONAL DIRECTOR, ESI CORPORATION, THRISSUR VS. G.SIVAPRASAD, PROPRIETOR, M.S.BRICKS, KOLLAM [2010 (I) LLJ 279 (Ker)] it is observed as under:

"By virtue of Section 101 of the Evidence Act, the burden of proving that number of employees engaged was less than the minimum stipulated by Section 2(12) of the ESI Act, 1948, was on the respondent. The view taken by the E.I.Court that such burden of proof was on the appellant and that it had not discharged the burden was erroneous..... The burden of proof to establish that less than the minimum number of employees stipulated in Section 2 (12) of the ESI ACT, 1948, is on the employer and not on E.S.I. Corporation."

8. It is the burden of the appellant to prove that the employees engaged by them were less than the number specified by the respondent. The appellant has failed to discharge the burden on their part. On the other hand, the respondent have by oral and documentary evidence clearly substantiate that the appellant will fall within the purview of ESI Act. In such circumstances, since the appellant has failed to prove that they do not fall under the purview of ESI Act, by adducing sufficient evidence, the question of law raised by the appellant in this aspect is answered in the negative and the order of the Employees' Insurance Court is confirmed.

9. The second para of the order passed by the Employees' Insurance Court finds that ample opportunity was not given to the appellant and therefore, remitted the matter back to the authority for fresh consideration. By the order, the appellant will not be prejudiced, but will get ample opportunity to prove their claim that they are not liable to pay contribution by a suitable evidence. Therefore, the questions of law raised by the appellant are answered in the negative and the order passed by the Employees' Insurance Court dated 14.03.2011 is hereby confirmed.

10. In fine, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar

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Sub Assistant Registrar

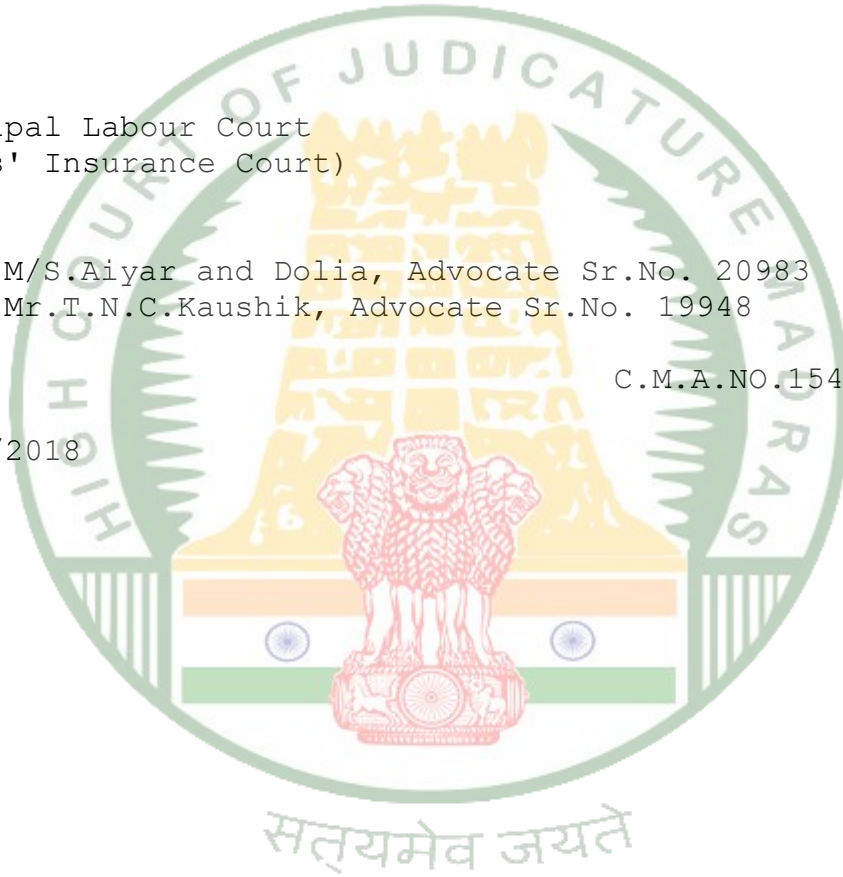
To

The Principal Labour Court
(Employees' Insurance Court)
Chennai.

- 1 cc to M/S.Aiyar and Dolia, Advocate Sr.No. 20983
- 1 cc to Mr.T.N.C.Kaushik, Advocate Sr.No. 19948

C.M.A.NO.1542 OF 2013

RRI 28/05/2018



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