

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3584 of 2010

Regional Director,
Employees State Insurance
Corporation Ltd.,
143, Sterling Road,
Chennai - 34.

... Appellant/Respondent

Vs.

M/s.Srinivasa Enterprises,
represented by its Proprietor,
R.Srinivasan, S/o.Ramasamy,
No.46, Railway Station Road,
Kodambakkam, Chennai - 600 024.

... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 82 of ESI Act, 1948, to set aside the decree and judgment of the First Additional City Civil Judge, Chennai passed in ESIOP.No.4 of 1990 dated 13.10.2000.

For Appellant : Mr.V.K.Vijayaraghavan

For Respondent : No appearance

J U D G M E N T

The appellant Regional Director, Employees State Insurance Corporation Limited has filed the present Civil Miscellaneous Appeal against the impugned judgment and decree dated 13.10.2000 in E.I.O.P.No.4 of 1990.

2.The dispute in the present case pertains to the spot inspection carried on by the Inspector, ESI Corporation on 16.02.1988. At the time of inspection, the Inspector of ESI Corporation had noticed that there were about eight workmen who were employed by the respondent factory during the first shift when the proprietor of the respondent was not present. The inspector noted down the name of the employees and was informed that during the second shift three more employees

were expected join.

3.Later, when the inspector visited the factory of the respondent in the afternoon, the proprietor had produced a fabricated attendance register showing only seven persons which included of two workmen who were to work in the afternoon shift i.e Munusamy and Anand.

4.According to the appellant, it stands confirmed that during the period in dispute, the respondent had employed 10 and more employees and was covered under the provisions of the ESI Act read with G.O.Ms.No.1088 dated 22.12.1976. The appellant had called upon the respondent proprietor concerned vide C18 Notice dated 07.09.1989 to register under the Act to make contributions under the ESI Act. The respondent replied to the notice vide letter dated 09.11.1989 stating that he has only employed seven persons and not 10 employees.

5.By an order dated 15.11.1989 bearing reference No.TN/INS.III/51-3687466, the Deputy Regional Director under Section 45 A of the ESI Act, 1948 has concluded as follows:-

I.K.Padmaja Nambier, Deputy Regional Director in exercise of the powers delegated to me by the Director General, think fit and accordingly order that contributions totalling Rs.7656/- for the period from 2/88 to 1/89 are finally determined plus interest amount @ 6% per annum up to 19.10.89 and @ 12% thereafter and you as one of the principal employer is hereby ordered to pay the above amount together with interest within a period of 15 days from the date of this order, failing which this shall be caused to be recovered as on Arrear of Land Revenue.

6.Aggrieved by the same, the respondent filed E.I.O.P.No.4 of 1990 before the I Additional Judge, City Civil Court, Chennai, which is designated as the ESI Court at Madras. By the impugned order dated 13.10.2000, the said Court has allowed E.I.O.P.No.4 of 1990 with the following observations:-

6.Basing upon the rival claims of the parties, the court has framed two issues for discussion. The consistent case of the petitioner is that the petitioner is that the petitioner has not engaged required the number of persons during the relevant period and therefore the provisions of the ESI Act are not applicable to the petitioner. But the consideration urged on the side of the

petitioner has been refuted on the side of the respondent. For considering the rival submissions made by either party, the court has to look into both the oral and documentary evidence adduced on either side. P.W.1 would say in his evidence that the petitioner has engaged only 7 persons and not more than that R.W.1 would say in his evidence that at the time of inspection 10 employees were working under the petitioner. R.W.1 has filed Ex.R1. Ex.R1 is an inspection report. In Ex.R1 the names of a persons have been mentioned. The date of inspection is 16.12.88. The period of inspection is 6/88 to 1/89. It is an admitted fact that section 2(12) of the ESI Act, has been substituted by the Act 29/89 with effect from 20.10.89. Now we are concerned with the period earlier to 20.10.89. Therefore the present provisions of Section 2 (12) of the ESI Act are not applicable to the petitioner. Even though it is stated in Ex.R1 that at the time of inspection 8 persons had been employed under the petitioner, Ex.R1 does not contain all required particulars of employees. It is an avowed principle of law that an inspection report should contain all particulars, the court cannot give much adherence to it. But in the instant petition, as already stated Ex.R1 does not contain all required particulars of employees. Therefore, basing upon Ex.R1, the court cannot come to a conclusion even for a minute that the petitioner has employed required number of employees during the relevant period. Since Ex.R1 cannot be given much importance that court can safely come to a conclusion that the respondent has not proved that the petitioner has engaged more than the required number of persons as employees during the relevant period.

7.It is contention of the learned counsel for the appellant Regional Director of ESI that the ESI Court erred in allowing the said E.S.I.O.P as there was enough evidence to show and on the date, when the inspection was made in the respondent M/s.Srinivasa Enterprises's premises on 16.02.1988, the Inspector of ESI found that 8 employees were workmen and three more employees were expected to work in the 2nd shift. During the second shift, three workmen namely Anand, Munusamy and Selvam were also present, which confirmed that more than 10 employees were employed. He further submitted that the report also shows that the proprietor of

the respondent gave a fabricated attendance register which was contrary to the spot inspection.

8.I have considered the arguments of the learned counsel for the appellant and perused the evidence on record and the impugned order of the learned Additional Judge, City Civil Court, presiding over the designated ESI Court.

9.The argument that the court has not considered the evidence on record has to be answered against appellant as the spot inspection report dated 16.02.1988 is not an independent piece of evidence and was not witnessed any other independent witnesses. The report indicates that there was an attendance register which was not ceased by the Inspector by drawing a mahazar. At the time of the spot investigation, the respondent was allegedly informed that there were more than ten employees with him.

10.The appellant has not discharged the burden of proof by letting in positive evidence showing that the documents that there were ten or more than ten employees employed by the respondent on the date of inspection by corroborating the same with the help of independent witnesses. Similarly, none of the records were ceased under mahazar by the Inspector to establish that the attendance register was fabricated.

11.I therefore do not find any reasons to interfere with the finding given by the ESI Court. Accordingly, the present Civil Miscellaneous Appeal is dismissed. No cost.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The First Additional City Civil Judge,
Chennai.

Copy to:The Section Officer,
V.R. Section, Madras High Court.

+1cc to Mr.K.C.Ramalingam, Advocate SR.99012

C.M.A.No.3584 of 2010

PA(CO)
CB(03/02/2020)