

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 1676 of 2018

Employees' State Insurance Corporation,
Rep. By its Deputy Director,
"PanchdeepBhavan",
No.143, Sterling Road,
Chennai - 34.

..Appellant

Vs

M/s.Drilcos (India) Pvt Ltd.,
Rep. By its Director,
267, Sidco Industrial Estate,
Ambattur,
Chennai - 600 098.

..Respondent

Appeal filed under Section 82 of the Employees Insurance Act, 1948 against the fair order and decree dated 13.07.2015 in EIOP No. 30 of 2005, on the file of the Employees Insurance Court (Principal Labour Court), Chennai.

For Appellant : Mr.SP.Srinivasan
For Respondents : No appearance

JUDGMENT

Statutory orders are expected to be speaking orders. Non-speaking order cannot be construed as an acceptable or a valid order within the provisions of the ESI Act. The statute contemplates various procedures as well as the factual and other issues. While so, the authorities exercising the powers under the statute are expected to adjudicate the issues with reference to the documents and materials available on record and pass appropriate speaking orders enabling the public to understand that the orders are passed based on merits as well as by considering the available evidences. It is not as if the statutory authority can pass an order that he has applied his mind. Mere application of mind is insufficient. The application of mind must be in consonance with the materials available on record. In the absence of any materials, the authorities cannot pass such an order based on presumptions and assumptions or the unknown information which was not recorded in the order. Thus,

merely stating that the statutory order is passed by application of mind or based on the information is absolutely untenable and such an application of mind based on the information must be substantiated with reference to the materials available on record otherwise such orders are to be treated as opposed to the provisions of the statute.

2. The order dated 13.07.2015 passed in EIOP No. 30 of 2005 is under challenge in the present civil miscellaneous appeal on hand.

3. The substantial questions of law raised by the appellant read as under:

"(a) Whether the employees engaged by the Respondent under various head fall within the definition of "employees" as defined under Section 2(9) of the ESI Act?

(b) Whether the Hon'ble EI Court is justified in setting aside the impugned order passed under Section 45A of the ESI Act dated 13.07.2015 on the premise of absence of documentary evidence produced by the Appellant herein before the Hon'ble EI Court, when the Respondents have not produced the contract agreement and salary register, attendance register, TDS deduction for proof of payment made to outside agency and other individuals as and when there is necessity for their services?

(c) Whether the Hon'ble EI Court is justified in placing the burden on the Appellant, when the Respondent has approached the Court and also challenged the Section 45A Order which was passed in accordance with the ESI Act?"

4. These substantial questions of law raised are relatable to the facts and circumstances of the case which were already adjudicated. However, the learned counsel appearing on behalf of the appellant reiterated that the authorities competent based on the information collected passed an order under Section 45-A of the Act. Thus, such an order passed under Section 45-A of the Act based on certain informations cannot be nullified by the ESI Court by stating that the authorities have not produced any documents. Admittedly, no documents were available in the present case to establish the case of the Employees' State Insurance Corporation. However, it is contended that the authorities are well within their powers to collect the information and passed an order under Section 45-A of the Act.

5. The ESI Court also arrived at a conclusion that Section 45-A order was passed. The order was challenged under Section 75-A of the Act before the Court. However, the applicant could not be able to produce documents and they may not be able to substantiate their contentions so as to justify the contributions. Based on such factors, the ESI Court dismissed the claim of the Corporation. Challenging the said order, the present appeal is filed.

6. Let us now consider the scope of Section 45-A of the Act, which deals with determination of contribution in certain cases. Section 45-A(1) of the Act reads as under:

"Section 45-A(1) - Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any Inspector or other official of the Corporation referred to in sub-section (2) of Section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under Section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees that factory or established."

7. Thus, it is clear that on the basis of information available to it by order determining the amount of contribution payable in respect of employees that factory or establishment, the ESI officials are empowered to collect the information and based on the collected informations, arrive at a conclusion and determine the amount of contribution payable in respect of the employees of the factory.

8. The question of law raised would amount to an information. Whether every information collected can be construed as acceptable information? Undoubtedly, the statutory authorities are empowered to collect information from any source and such informations must be based on certain relatable materials or from reliable documents, which is to be substantiated and to be established before the Court of law, if an appeal is filed. Thus, mere information is insufficient. An information must be based on certain acceptable materials and such materials collected to gather the information must be produced to establish that the information is genuine and sufficient to determine the contributions payable.

9. The arguments advanced by the learned counsel appearing for the appellant is that it is sufficient, if an information is collected by the authorities. This Court is of the opinion that the informations are sufficient to determine the contributions. However, the acceptability and unacceptability of the informations are to be substantiated by the Department officials. In the event of such an unguided discretion, the same will lead to so many complications and further will pave the way for corrupt activities.

10. The power of discretion is to be exercised with due diligence and by recording the reasons. The power of discretion can never be absolute. Any discretionary power exercised must be in consonance with the established principles of law and therefore, merely by stating that the officer collected the information and determined the contribution is insufficient to meet out the requirements of the established principles of law. Thus, every information collected by the statutory authorities must be based on some materials or the informations are to be substantiated with acceptable reasons. All such materials or the acceptability of the informations are bound to be decided before the Court of law. Thus, it is not as if the ESI Corporation made a claim that they can collect the information and determine the compensation in a day light cannot be the intention as well as the idea of the statute itself. Unguided discretionary powers cannot be provided to any authority as it is directly opposed to the constitutional principles. However, the power under the statute is to be guided with the principles and, therefore, the order passed by the authorities by merely stating that they are determining the contribution based on the informations cannot be accepted as an order passed within the provisions of Section 45 of the ESI Act.

11. In the present case, Section 45A order reveals that the authority, who passed an order by applying his mind to all relevant facts of the case and gone into objections. The mere finding, as stated above, is insufficient to arrive at a conclusion that the authority competent has passed an order based on any unacceptable evidence or information in order to meet out the requirements of Section 45-A of the Act. Every word in a statute is to be interpreted progressively to understand that such words are employed with a specified idea and in the present case, the statute contemplates "on the basis of information". Thus, on the basis of the information available indicates that such an information must be based on certain materials or based on any acceptable evidence, and those materials or documents or sources must be substantiated or produced before the Court of law in order to arrive a conclusion that the authorities passed an order under Section 45A of the Act, considered all those materials to reasonably arrive a

conclusion and determine the contribution payable. In the absence of any such evidence or records, the Courts have no option to arrive at a conclusion that the order is non-speaking and the informations are not substantiated and, therefore, the contribution is unsustainable.

12. While dealing with many such cases before this Court, this Court consistently finds it difficult to accept the orders passed under Section 45A of the Act in view of the fact that no reasons or evidences are recorded in such orders. Such irresponsibility on the part of the competent authority in passing orders under Section 45A is to be taken note of by the higher officials and such orders, if passed, must be treated as an order passed without any application of mind and in violation of Section 45A of the Act; and if there is any lapses on the part of the authorities then the higher officials are bound to conduct an enquiry against such officials and record their negligence, lapses, dereliction of duty or corrupt practices and initiate appropriate disciplinary action. If such stringent measures are not taken it will become habitual to all the officials to pass such non-speaking orders which would defeat the purpose and object of the ESI Act. The very object of the ESI Act is to provide decent medical facilities to the workmen which is a right to life enunciated under Article 21 of the Constitution of India. The decent medical facilities provided is an integral part of Article 21 of the Constitution and, therefore, the authorities dealing with the welfare legislation are responsible and accountable for their functioning and activities. The lapses, negligence and dereliction of duty are to be viewed seriously and all suitable disciplinary actions and prosecutions are to be initiated against those officials, who are passing such orders without application of mind or without collecting reliable informations based on certain materials. An order must be self-speaking; that an order passed by the authority is with some deliberations and with some sincerity. If the order passed is not self-speaking, irresponsible or in a lackadaisical manner, then the higher authorities are bound to look into the issues and initiate appropriate actions.

13. In the present case, the ESI Court has not completely set aside the order passed under Section 45A of the Act. Contrarily, the ESI Court factually considered the materials available on record and granted exclusion in respect of Service Engineers and thereafter imposed a contribution payable as Rs.7,566/- and allowed the appeal in-part. Therefore, the facts and circumstances were completely taken care of and the ESI Court adjudicated the issues in right perspective and there is no infirmity as such.

14. In view of the above, this Court is not inclined to interfere with the order impugned and, accordingly, the order dated 13.07.2015 passed in E.I.O.P.No. 30 of 2005 stands confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected C.M.P.Nos. 9445 and 13160 of 2018 are closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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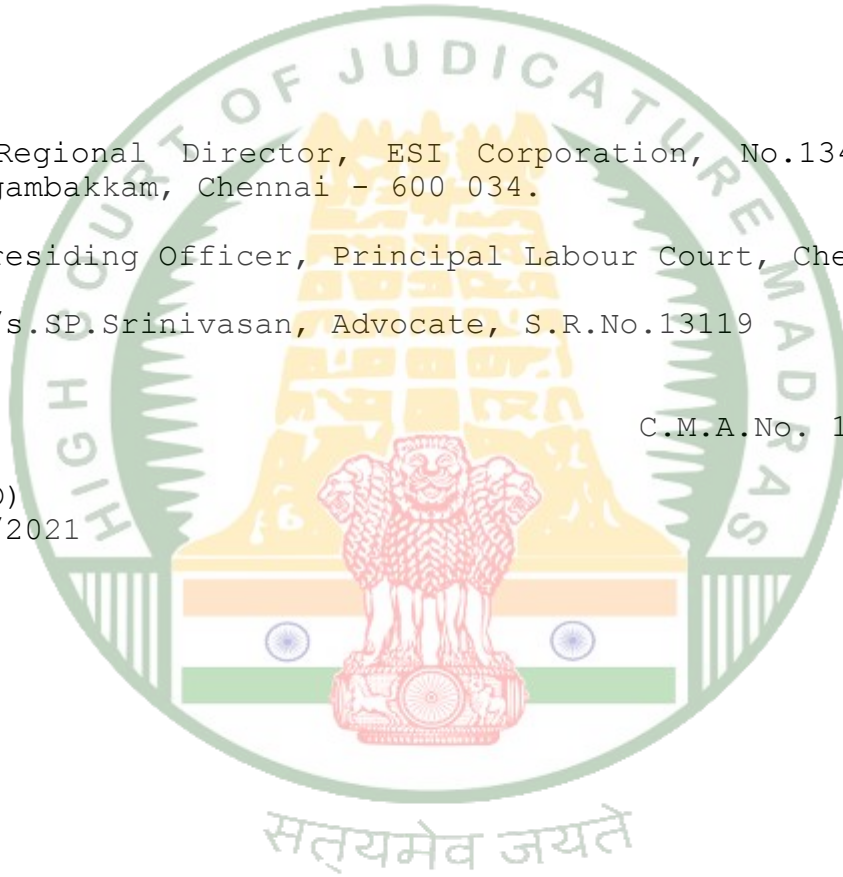
(1) The Regional Director, ESI Corporation, No.134, Sterling Road, Nungambakkam, Chennai - 600 034.

(2) The Presiding Officer, Principal Labour Court, Chennai.

+1cc to M/s.SP.Srinivasan, Advocate, S.R.No.13119

C.M.A.No. 1676 of 2018

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