IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1682 OF 2018
&
CMP NO.13180 OF 2018

1. Employees State Insurance Corporation,
Rep. by its Deputy Director,
No. 143, Sterling Road,
Chennai - 600 034.

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

...Appellants/Respondents

vs.

M/s. Srinivasa Special Equipment Engineers,
A Partnership firm rep. herein by its partner
Jayaraj.

...Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 82 (2) of the Employees Insurance Act, 1948, against the Fair Order and Decree in EIOP No. 102 of 2004 dated 27.07.2015, on the file of the Employees Insurance Court (Principal Labour Court Chennai), Chennai.

For Appellants : Mr.SP.Srinivasan

For Respondent : Mr.T.S.Vijaya Raghavan

JUDGMENT

(This case was heard through Video Conferencing)

This Appeal has been filed by the Employees State Insurance Corporation challenging the impugned Judgment and decree dated 27.07.2015 passed by the Employees Insurance Court (Principal Labour Court, Chennai) in EIOP No. 102 of 2004.

2. The Appellant Corporation has raised the following substantial questions of law:

a. Whether the Hon'ble EI Court is justified in holding that the 10th person, Thirumal, watchman was employed and engaged by the partners for their residence and not for the factory and hence not covered under ESI Act?

b. Whether the Hon'ble EI Court is justified in setting aside the impugned Order by holding that no proof of Section 45A Order passed for the earlier period and that no inspection was carried out during the relevant period (3/92 to 9/92)?

c. Whether the Hon'ble EI Court is correct in holding that only 9 persons were employed by the Respondent?

d. Whether the Hon'ble EI Court is correct in setting aside the impugned Order passed under Section 45A of the ESI Act dated 12.12.2003?

3. The questions that arise for consideration in this Appeal are whether the respondent establishment will come within the purview of Employees Insurance Corporation or not and whether they are liable to pay the ESI contributions as demanded by the Appellant corporation.

4. It has been the consistent stand of the Respondent that it does not come within the purview of the Employees State Insurance Act, 1948, as the employees engaged by them are less than 10 in Number. A consistent stand has been taken by the Respondent as seen from the pleadings and evidence available on record that they have employed only 9 persons and so they are not liable to pay ESI contributions under the Employee State Insurance Act, 1948. In such circumstances, they filed EIOP No. 102 of 2004 before the ESI Court, Principal Labour Court, Chennai against the Appellant Corporation seeking the following reliefs

a. to declare that the provisions of the ESI Act, 1948 will not apply to the petitioner establishment as they do not employ 10 or more persons at any point of time

(Prayer (a) amended as per order in I.A. No. 215 of 2013 dated 30-07-2014)

b. set aside the impugned assessment order of the 1st Respondent dated 12-12-2003 in ref. No. 51 - 58267/ 3963 under Section 45 (A) of the Act and

c. for the cost of this proceedings

5. The ESI Court under the impugned Judgment and decree dated 27.07.2015 has allowed the petition filed by the Respondent in EIOP No. 102 of 2004. Aggrieved by the same, the ESI Corporation has filed this Appeal raising the aforementioned substantial questions of law.

6. While allowing the petition filed by the Respondent in EIOP No. 102 of 2004, the ESI Court has given the following reasons,

a. RW1, the Official of the Appellant Corporation has admitted that in column No. 15 of his report, it is mentioned that the head count during the course of his inspection was found to be only 9. He has also admitted that one Thirumal, engaged as a watchman was added as a 10th person thereafter.

b. RW1 has admitted in his cross examination that the name of the said Thirumal is not found in the attendance register as well as in the salary register which has been marked as Exhibit P19 series and Exhibit P20 series.

c. RW2, the other witness of the Appellant Corporation has also admitted that under the inspection report it is stated that 9 persons were found working and one security was present and totally 10 persons were found employed by the Inspector.

d. As per the Exhibits P4, P5, P6, P8 & P9 to P13, it is found that the Respondent establishment as well as the residence of the partners of the Respondent are located in the same address.

e. Thirumal, the 10th person who the petitioner Corporation claims an employee of the Respondent establishment, was given ESI Code No. 51-51675-101 by the security service provider, Watch 'n' ward (TN) Pvt. Ltd. The general Ledger and Sales Tax assessment for the period 4/1994 to 3/2002 as per the Exhibits P16 series, P17 series and P18 series show that not even one payment was made by the Respondent establishment to the service provider Watch 'n' ward for the security Thirumal. The respondent has also produced a letter issued by Watch 'n' ward (TN) Pvt. Ltd which was marked as Ex.P15 to show that the watchman Thirumal was an employee of Watch 'n' ward (TN) Pvt. Ltd. having a separate ESI Code referred to supra.

7. Before the ESI Court, the Respondent establishment has filed 31 documents which are marked as Ex. P1 to Ex. P31 and one witness was examined on their side as PW1. On the side of the Appellants, 3 documents were filed namely Ex. R1 to Ex. R3 and 2 witness were examined namely RW1 & RW2.

8. Infact, before the ESI Court, the Respondent establishment has filed general ledger maintained by them right from 01.04.1994 to 31.03.2002 which has been marked as Ex. P16 series, Ex. P17 series and Ex. P18 series. Under those ledgers, the name of Thirumal does not find a place. The inspection of the Respondent establishment carried out by the Appellant Corporation on 23.09.1994. Admittedly, as seen from the general ledgers marked as exhibits, Thirumal, the name of the alleged employee does not find a place. The property Tax receipts produced by the Respondent establishment which have been marked as Exhibits also reveal that the partners of the Respondent

establishment are also having their residence in the very same compound where the Respondent establishment is located. A consistent stand has been taken by the Respondent establishment that the alleged watchman was not employed by them, but was employed by their partners in their individual capacity to give protection to their mother and sister.

9. Only after giving due consideration to the pleadings and evidence available on record, the ESI Court has come to the right conclusion that since the Respondent establishment has not got under its rolls 10 or more persons, they do not come under the purview of the Employees State Insurance Act and has rightly allowed the petition filed by them in EIOP No. 102 of 2004. There are no debatable issues of law involved in this Appeal. Therefore, the substantial questions of law raised by the Appellants referred to supra does not have any merit and they are answered against the Appellant Corporation.

10. In the result, this Civil Miscellaneous Appeal is Dismissed and the judgment and decree dated 27.07.2015 passed by the Employees Insurance Court (Principal Labour Court, Chennai) in EIOP No. 102 of 2004 is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To
The Employees Insurance Court,
Principal Labour Court, Chennai.

Copy To
The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.SP.Srinivasan, Advocate, S.R.No.47105
+1cc to Mr.T.S.Vijaya Raghavan, Advocate, S.R.No.47466

C.M.A.No.1682 of 2018
&
CMP No.13180 of 2018

AJS(CO)
RLP(06/10/2021)