



WEB COPY

C.M.A(MD) No.1090 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.08.2021

Delivered on : 17.09.2021

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.M.A(MD) No.1090 of 2013

and

M.P.(MD) No.1 of 2013

M/s.Laxmi Creations,
Nageswaran North Street,
Kumbakonam,
Thanjavur District
Through its Proprietor

... Appellant/Petitioner

Vs .

The Regional Director,
E.S.I. Corporation,
143, Sterling Road,
Nungambakkam,
Chennai - 600 034.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 82 of the Employees State Insurance Act, 1948, against the decree and judgment of the E.S.I. Court (Principle District Court), Thanjavur, passed in E.S.I.O.P.No.20 of 2003, dated 27.02.2012.

For Appellant	: Mr.P.Chandra Bose
For Respondent	: Mr.R.Ravikumar

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in E.S.I.O.P.No.20 of 2003, dated 27.02.2012, before the E.S.I. Court - Principle District Court, Thanjavur.

2.The appellant herein is the petitioner. The respondent herein is the respondent before the E.S.I. Court.

3.Brief substance of the petition in E.S.I.O.P.No.20 of 2003, is as follows:-

3.1.After obtaining permission, the petitioner unit was functioning from 01.04.1998 with ten employers with usage of electrical energy. On 02.09.1998, the respondent sent a notice under Section 2(12) of the E.S.I. Act, insisting the petitioner to insure the unit. On 20.08.2001, an Inspector from the respondent, conducted a visit and on 17.10.2002, he sent a notice to the petitioner, to attend an enquiry in person and demanded a sum of Rs.97,957/- as contribution and a summon was sent to the petitioner to appear on

<https://hcservices.ecourts.gov.in/hcservices/>



13.11.2002. Without considering the reply submitted by the petitioner and without giving sufficient opportunity, the respondent **freezed** the account of the petitioner, on 23.02.2003.

3.2.The petitioner is not liable to pay E.S.I. Contribution for the period from 21.05.1993 till 31.03.1998. Without hearing the petitioner, an order under Section 45-A was passed by the respondent, which is against natural justice. The order passed by the respondent is to be set aside and a declaration that the petitioner unit will not come under the purview of the Act, is to be granted.

4.Brief substance of the counter in E.S.I.O.P.No.20 of 2003, is as follows:-

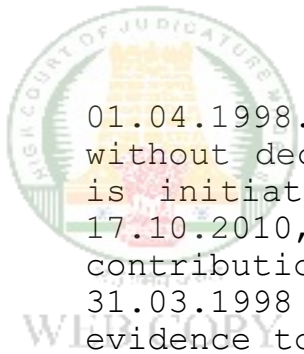
No documents was furnished to the respondent, at the time of verification, on 09.07.1998. A Inspector from the respondent Office visited the premises on 20.08.2001 and he examined the documents from May 1993 till 31.03.1999. The E.S.I. Act is applicable to the petitioner from 21.05.1993 till 31.03.1999, the petitioner has to pay a sum of Rs.64,679/- as contribution for the workers. The petitioner has paid a sum of Rs.17,154/- for the period from April-1998 till March 1999. After deducting various amount already paid by the petitioner, the petitioner has to pay a sum of Rs.97,597/-. On April-1993, more than ten persons were employed by the petitioner and they were using electric motor. The petitioner is liable to pay contribution for the workers.

5.On the side of the petitioner, one witness was examined and ten documents were marked. On the side of the respondent, one witness was examined and five documents were marked.

6.After considering both sides, the E.S.I. Court, has dismissed the petition. Against which, the appellant / petitioner has preferred this Civil Miscellaneous Appeal.

7.On the side of the appellant, it is stated that the appellant has questioned the recovery proceedings and thereby also questioned the applicability of the Act itself. Only after a decision is made regarding the applicability of the Act to the appellant concern, the respondent can determine the quantum. The E.S.I. Court failed to consider that the respondent did not give an opportunity to the appellant. The applicability of the Act has to be decided as the first issue. Unless the order under Section 45-A is not set aside, the employer cannot question the recovery proceedings and the E.S.I. Court failed to apply its mind on that ground. The E.S.I. Court failed to note that the Act is not applicable to the appellant.

8.The date of commencement of the concern is 21.05.1993. The ~~services~~ **alleged** to have engaged fifteen persons only on



01.04.1998. Without conducting an enquiry under Section 45A, without deciding the applicability of the Act, recovery proceedings is initiated and the same is erroneous. The communication, dated 17.10.2010, under Section 45-C to 45-I of the Act, demanding contribution of Rs.97,597/- for the period from 21.05.1993 to 31.03.1998 erroneous. There was no material evidence or oral evidence to prove that power was used on 21.05.1993 and there was no material evidence to show that ten employees were employed. Purchase of one electric iron box and sewing machines cannot be treated as if the petitioner was using power.

9.The visit note of the E.S.I Inspector reveals that the sewing machines were purchased on 22.05.1993 and on 24.05.1993. Without marking the account books, account registers, attendance registers and pay registeres and without examining the employees, who worked on that day, the E.S.I. Court cannot come to a conclusion that the appellant has engaged ten persons on 22.05.1993, and that power was used on that date. Mere mentioning of number of persons cannot be considered for the applicability of the Act. The licence was issued to the appellant only on 01.04.1998 and the Act is not applicable to the appellant for the period from 21.05.1993 till 01.04.1998.

10.The appellant has raised the following points for consideration:-

1.Without conducting any enquiry under Section 45-A and without valid material evidence as well as oral evidence the learned Judge finding that the Act is applicable to the petitioner for the period from 21.05.1993 to 31.03.1998 is correct or not.

2.Without marking the documents and examine the employees worked on the date upon the E.S.I. Inspector's note, the conclusion of the learned Judge that 10 employees were engaged on the date of opening of the establishment is correct or not.

3.Without considering any enquiry under Section 45-A of the E.S.I. Act, the recovery proceedings and demand of the Corporation to claim the sum of Rs.97,597/- as contribution for the period from 21.05.1993 to 31.03.1998 is correct or not.

4.Before initiating the recovery proceedings, whether the respondent has followed the procedures as laid down the law.

11.The main contention of the appellant is that no enquiry was conducted before the passing of the order under Section 45-A of the E.S.I Act. The appellant is questioning the visit note and denying the engagement of 10 employees on 21.05.1993, 31.07.2001 and on 20.08.2001.



12.On the side of the respondent notice dated 09.07.2008 was marked as Ex.R1 and the report dated 20.08.2001 was marked as Ex.R3.

13.The entire case is based on the visit note, dated 20.08.2001. The documents prior to that period were not filed. No documents for the period from the year 1993 till 01.04.1998 was marked either on the side of the respondent or on the side of the appellant. In the above circumstances, an opportunity for the appellant to put forth his case has to be given, in the interest of justice and hence, the matter has to be remitted back to the trial Court for fresh disposal, in accordance with law. Liberty is given to both the parties to adduce evidence and to produce documents.

14.Hence, the order in E.S.I.O.P.No.20 of 2003, dated 27.02.2012, on the file of the E.S.I. Court - Principle District Court, Thanjavur, is hereby set aside. The matter is remitted back to the trial Court for fresh disposal in accordance with law. Both the parties are permitted to produce documents and to adduce evidence. The trial Court is directed to dispose of the case within a period of six months from the date of receipt of a copy of this order.

15.With the above direction, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The E.S.I. Court -
Principle District Court,
Thanjavur.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.R.RAVIKUMAR, Advocate (SR-29688[F] dated 21/09/2021)

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17.09.2021

RS (24.09.2021) 4P 5C