



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	31.03.2021
Date of Judgment	01.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD)No.6 of 2013

1.The Authorised Officer,
Sub Regional Office,
Employees' State Insurance Corporation,
4th Main Road,
K.K.Nagar, Madurai-625 020.

2.The Recovery Officer,
Sub Regional Office,
Employees' State Insurance Corporation,
4th Main Road, K.K Nagar,
Madurai-625 020.

3.The Joint Director,
Sub Regional Office,
Employees' State Insurance Corporation,
4th Main Road, K.K Nagar,
Madurai-625 020.

: Appellants/Respondents

Vs.

M/s.Nagarathinam & Sons,
Represented by its Proprietor,
Partner Mr.N.Jagadeesan,
Namanasamudram-622 422,
Pudukkottai District.

: Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 82 of the ESI Act, 1948, against the order, dated 02.07.2012 of the Labour Court (ESI Court), Madurai, in ESI OP No.29 of 2001.

For Appellants : Mr.P.Ganapathisamy

For Respondent : Mr.Babu Rajendran



J U D G M E N T

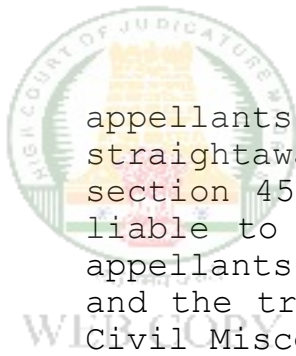
Challenge made in this Civil Miscellaneous Appeal is to the order, dated 02.07.2012 of the Labour Court (ESI Court), Madurai, in ESI OP No.29 of 2001.

2.The respondent Firm is situated at K.Salaipudur, Madurai. The 1st appellant, by an order, dated 24.04.1999 under section 45-C of the Act, directed to recover a sum of Rs.8,760/- with interest at the rate of 15%. The 2nd appellant issued an order for recovery of contribution for the period from February 1997 to November 1997 by issuing prohibitory order under section 45(h) of the Act. The respondent filed a petition under section 75(1)(a)(c) and (g) of ESI Act in ESI OP No.29 of 2001 on the file of the ESI Court (Labour Court), Madurai. The learned Judge, ESI Court, Madurai, by order, dated 02.07.2012, allowed the petition, by setting aside the order of the ESI Corporation and remitted back the matter to the ESI Corporation for fresh disposal according to law. Challenging the said order, the ESI Corporation is before this court with this Civil Miscellaneous Appeal.

3.Heard both sides and perused the materials available on record.

4.The main contention of the appellants/respondents is that only after verifying the Wages Register of the respondent/petitioner, the appellants/respondents found that the employer had paid total wages of Rs,1,07,186/-, on which ESI Contribution payable was Rs.6,972/- and a spot letter was prepared by the Inspector of ESI Corporation and the spot letter was countersigned by the employer, who had also received the original of the same and there was representation from the employer to the ESI Corporation against said quantum of wages/contribution from the employer and in such circumstances, the contribution was straightaway clarified by the ESI Corporation by way of C-18 notice and the employer has not stated before the trial court that the actual contribution payable by him is different from Rs.6,972/- and therefore, any assessment after giving opportunity of hearing will be an empty formality and further, no evidence was adduced on the side of the respondent/petitioner to show that he was in anyway prejudiced by the said claim of Rs.6,972/- and the violation of the rules of natural justice is not sufficient to invalidate the quasi judicial order and the administrative action, which visited the person with civil consequences, unless he not only pleads, but also proves that he was prejudicial on account of any violation of principles of natural justice and prays that the Civil Miscellaneous Appeal has to be allowed.

5.On the other hand, the learned counsel appearing for the respondent/petitioner submitted that no reasonable opportunity was given to the petitioner/respondent to defend their case and no assessment order was passed under section 45A of the Act and the



appellants/respondents without passing the above orders, straightaway initiated proceedings for recovery of the amount under section 45C of the Act and hence, the respondent/petitioner is not liable to pay the contribution and hence, the order passed by the appellants/respondents, on 24.04.1999 and 25.10.1999 are not valid and the trial court has rightly passed the order and prays that the Civil Miscellaneous Appeal has to be dismissed.

6.The main contention of the appellants/respondents is that after verifying Wages Register, they found that the employer has to pay ESI contribution of Rs.6,972/- and for that, spot letter was prepared and it was counter signed by the employer and hence, it is not necessary to determine the contribution under section 45(A) of the Act. But the contention of the respondent/petitioner is that before passing recovery order, it is necessary to determine the contribution under section 45(A) of the ESI Act, but no order under section 45(A) of the ESI Act was passed before ESI contribution, straightaway passed the order of recovery and hence, the above recovery order is not valid.

7.In this case, the appellants/respondents only after verifying the Wages Register, came to the conclusion that the total wages is Rs.1,07,186/- and determined the contribution as Rs.6,972/- and a spot letter was also issued to the employer and in the spot letter, the employer also counter signed. In the spot letter, it was not stated that the employer counter signed with protest.

8.It is pertinent to note that the respondent/petitioner did not appear before the trial court and stated the averments before the trial court. The respondent/petitioner is the proper person to deny the allegations found in the counter statement of the appellants/respondents. The respondent/petitioner did not deny the averments found in the spot letter. On verification of the spot letter, it is stated that the appellants/respondents verified the Wages Register and found that the total wages is Rs.1,07,186/- and only on the basis of the total salary, the appellants/respondents determined the ESI contribution and in the spot letter, the employer also counter signed. At that time, the respondent/petitioner has not raised any objection. Hence, the appellants/respondents sent recovery notice to the employer. Afterwards, notice under section 45 (A) of the ESI Act was issued, which is only an empty formality. Further, it is the duty of the employer to prove that in his concern, he employed less than 10 persons. To prove it, no document was filed on the side of the respondent/petitioner. Hence, it is held that without passing order under section 45(A) of the ESI Act, sending of recovery notice by the appellants/respondents is valid. The ESI Court without considering the above aspects has passed the impugned order, which is required interference of this court. Accordingly, the impugned order passed by the ESI Court, is liable to be set aside and it is set aside.



9.In the result, this Civil Miscellaneous Appeal is **allowed**. The impugned order, dated 02.07.2012 of the Labour Court (ESI Court), Madurai, passed in ESI OP No.29 of 2001 is set aside. No costs.

Sd/-

Assistant Registrar (Crl side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judge, Labour Court,
Madurai.

Copy to

The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.BABU RAJENDRAN, Advocate (SR-21164[F] dated 05/07/2021)

C.M.A(MD)No.6 of 2013
01.07.2021

RK (16.08.2021) 4P 5C