



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 07.07.2021

Delivered On : 13.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.960 of 2013

WEB COPY

Employees State Insurance Corporation,
Sub-Regional Office (Tirunelveli),
Municipal Shopping Complex,
Salai Street, Sindupondurai, Tirunelveli,
Rep. By its Joint Regional Director

... Appellant

Vs.

P.P.& Sons, Registered Firm,
63, Sundara Vinayagarkovil Street,
T.N.Pudukudi, Puliyangudi,
Rep. By its Partner

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 82 of the E.S.I. Act, 1948, to set aside the order dated 04.01.2013 passed in ESIOP No.15 of 2008 by the Employees Insurance Court (Labour Court), Tirunelveli.

For Appellant : Mr.R.Ravindaran

For Respondent : Mr.Jerin Mathew
for Mr.M.E.Ilango

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order passed in E.S.I.O.P.No.15 of 2008 dated 04.01.2013 on the file of the Employees State Insurance Court, Labour Court, Tirunelveli.

2.The appellant herein is the respondent and the respondent herein is the petitioner in the claim petition. The respondent herein has filed a claim petition in E.S.I.O.P.O.P.No.15 of 2008 for permanent injunction and to set aside 45-A order No.66/31027/11/45A/32/08/INS/SRO/TLI dated 02.06.2008.

3.A brief substance of the claim petition in E.S.I.O.P.No.15 of 2008 is as follows:

The petitioner is a partnership firm dealing in yarn business. The petitioner is manufacturing lungis and sarees for wages. The petitioner is not the owner of the textile mills. The petitioner engaged only three labourers. No electricity was utilized for the purpose of manufacturing. On 19.08.2008, in the inspection report was prepared by the Officer, it was mentioned that 20 persons



were engaged in the manufacturing unit. The petitioner never engaged 20 persons. Notice under C 18(1) was issued to the petitioner. On 25.04.2008, an enquiry was conducted. The petitioner prayed time for filing document. The enquiry was adjourned to 12.05.2008. Again the enquiry was adjourned to 04.06.2008. Without giving sufficient opportunity to the petitioner, the enquiry officer closed the enquiry and without the knowledge of the petitioner, passed an order under Section 45(a) on 02.06.2008 and also passed an order that the petitioner has to pay Rs.14,300/-. Each manufacturing unit is a separate firm. They have separate door numbers and were doing separate business. There is no connection between the owner of the power looms and there is no common investment. Separate premises and separate E.B. connection is available. There is no possibility of treating the petitioner's unit as a part of other power looms.

4. Brief substance of the counter filed by the respondent is as follows:

The petitioner is manufacturing sarees and lungis using power looms utilizing the heavy electric connection. On 19.02.2018, the Inspector of the respondent visited the premises and found out twenty employees were engaged. No document was filed by the petitioner. The petitioner failed to give the particulars of the employees. Without any objection, the petitioner signed the inspection report. Since the power loom is utilizing electricity, the firm comes under ESI Act, as per Section 2(12) of the Act. Hence, form C(11) with separate number was given to the petitioner. The petitioner failed to file the accounts and failed to pay the contribution to the ESI for the period from 02/2008 to 03/2008. Form C18 was sent. An opportunity was given to the petitioner, but he failed to utilize the same. He has not produced the accounts. Hence, the order under Section 45A was passed.

5. On the side of the petitioner, four witnesses were examined and 24 documents were marked. On the side of the respondent, two witnesses were examined and five documents were marked. After hearing both sides, the Labour Court set aside the order passed by the Corporation. Against the same, the Corporation has preferred this appeal.

6. On the side of the appellant, it is stated that the employer has submitted only irrelevant documents. The relevant documents are not marked. The trial Court has allowed the O.P., without considering the fact that the employer failed to prove the case under Section 101 of Indian Evidence Act and the Labour Court failed to consider that the employer signed Ex.P1. As per Section 115 of the Indian Evidence Act, the respondent is estopped from taking a contra plea against his act. It is the duty of the Inspecting Officer to prepare the visit note and a copy was given to the employer. The respondent failed to comply the provisions of the ESI Act and prayed the order passed by the Labour Court to be set



7.The points of the consideration is as follows:

(i)Allowing the petition after coming to the conclusion that the petitioner not produced any relevant documents is correct as per Section 101 of the Indian Evidence Act 1872 ?

(ii)The respondent acted to believe that there are 20 employees are working for wage and denied later will amount to estopped as per Section 115 of the Indian Evidence Act 1872 ?”

Issue No.2:

8.On the side of the appellant, it is stated that the factory is manufacturing cotton sarees and lungis. On 01.02.2008, it was found out that 20 employees were working for wages and the unit is coverable under the Act. The Branch Manager, who surveyed the unit was examined as R.W.1. Sufficient opportunity of hearing was given.

9.On the side of the appellant, it is stated that there is always a presumption that public officers would discharge their duties honestly and in accordance with the rules of law. In support of his averments, a judgment passed by the Hon'ble Supreme Court in the case of **Organo Chemical Industries v. UOI and Others** , reported in **AIR 1979 SC 1803**, is cited.

10.The learned counsel for the appellant would rely upon the judgments of the Delhi High Court in the case of **Bright Export v. Central Board of Trustees**, reported in **2016(2) LLN 660** and a judgment of the Hon'ble Supreme Court in the case of **Orissa Mining Corporation and another v. Ananda Chandra Prusty** reported in **1997 (1) SLJ SC 133**.

11.The learned counsel for the appellant would rely upon the judgment of the Hon'ble Supreme Court in the case of **Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee** reported in **1977 SCC (L&S) 226 (SC)**, wherein it is stated as follows:-

“Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, features and fundamentals of each essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall



be hit below the belt-that is the conscience of the matter."

12.On the side of the respondent, it is stated that the findings of the visit note was wrong. The visit note is bereft of particulars and have been prepared in a hurried manner. The inspection itself was conducted in an improper manner and the ESI Code allotted on the basis of visit note is wrong. The name of the factory mentioned in the visit note is P.P. & Sons Power Loom but the case was filed only as P.P & Sons.

13.On the side of the respondent, it is stated that only one opportunity was given to the respondent. The respondent was not present on 12.05.2008. Sufficient opportunity was not given to the respondent and the order under Section 45A is in violation of principles of natural justice. The appeal under Section 80(2) of ESI Act could be maintained, only when there was a substantial question of law is raised and that this appellant has not raised any substantial question of law and prayed the appeal to be dismissed.

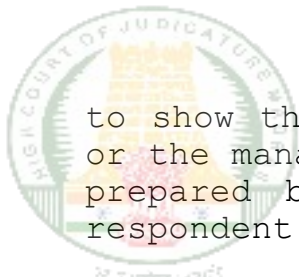
14.Since sufficient opportunity was not given to the respondent, the question raised by the appellant is not sustainable.

15.On the side of the appellant, it is stated that the employer has signed the visit note and that the burden is upon the employer to prove his case and the Labour Court has failed to consider the same.

16.On the side of the appellant, it is stated that the appellant has sent C11 form to the respondent to comply the ESI Act as mentioned in Ex.B2. It is further stated that the employer made the appellant to believe that there was 20 workers working for wages and the employer is estopped from taking a contra plea under Section 115 of Indian Evidence Act.

17.The name and particulars of the employees working in the respondent company, at the time of visit was not narrated in the visit note. Though it is stated that the unit was a power loom, R.W.1 has deposed that he has not noted the E.B. connection number and R.W.1 has deposed that nine power loom were available. But nobody was working in the power loom. He has further deposed that he visited the premises at the time of change of shift and that he did not know how many employees were entering the premises and how many were leaving the premises.

18.The contention of the visit note was denied by the respondent. The availability of the 20 workers working in the premises was denied by the appellant. The name of the employees, father name were not furnished in the visit note, Ex.R1. The visit note mentioned the name of the firm as P.P. & Sons power loom. But the case was registered against P.P. & sons. No document was filed



to show the signature in the visit note was made by the proprietor or the manager of the unit. Hence, it is decided that the visit note prepared by R.W.1 cannot be treated as an estoppel against the respondent under Section 115 of the Indian Evidence Act.

Issue No.1:

19. There was no statement in the visit note that the respondent failed to produce the relevant documents. In the enquiry, sufficient opportunity was not given to the respondent to produce documents or to adduce evidence. Hence, the question raised by the appellant regarding the Section 101 of Indian Evidence Act is not maintainable.

20. In the above circumstances, the question of law raised by the appellant is not maintainable and there is nothing sufficient enough to interfere in the order passed in E.S.I.O.P.No.15 of 2008 dated 04.01.2013 on the file of the Employees State Insurance Court, Labour Court, Tirunelveli. Hence, this Civil Miscellaneous Appeal is dismissed. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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

1. The Employees Insurance Court (Labour Court),
Tirunelveli.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-26315[F] dated 13/08/2021)

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